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STATE LIBRARY

THE
REVISED LAWS
OF
INDIANA,

ADOPTED AND ENACTED BY THE
GENERAL ASSEMBLY

AT THEIR EIGHTH SESSION.

TO WHICH ARE PREFIXED,
*THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION OF
THE U. S., THE CONSTITUTION OF THE STATE OF INDIANA,*

AND
SUNDY OTHER DOCUMENTS, CONNECTED WITH THE POLITICAL HISTORY OF
THE TERRITORY AND STATE OF INDIANA.

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DECLARATION OF INDEPENDENCE.

In Congress, July 4th, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES
OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station, to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires, that they should declare the causes, which impel them to the separation.

We hold these truths to be self-evident—That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness: That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves, by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

Propriety of
the declara-
tion.

Unalienable
rights of the
people, &c:

Recitation of injuries. He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right estimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these states; for that purpose, obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it, at once, an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress, in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They, too, have been deaf to the voice of justice, and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States

Usurpations on the part of the British crown.

Petitions for redress, unavailing.

Appeal to the British people fruitless, &c.

DECLARATION OF INDEPENDENCE.

Declaration. of America, in general congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things, which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honour.

Mutual
pledge of fidelity.

The foregoing declaration was, by order of congress engrossed, and signed by the following members:

JOHN HANCOCK.

NEW-HAMPSHIRE.

Josiah Bartlett,
William Whipple,
Matthew Thornton.

MASSACHUSETTS BAY.

Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

RHODE-ISLAND, &c.

Stephen Hopkins,
William Ellery.

CONNECTICUT.

Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott,

NEW-YORK.

William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

NEW-JERSEY.

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

PENNSYLVANIA.

Robert Morris,

Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

DELAWARE.

Cesar Rodney,
George Read,
Thomas M'Kean.

MARYLAND.

Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Carrollton.

VIRGINIA.

George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, jr.,
Francis Lightfoot Lee,
Carter Braxton.

NORTH-CAROLINA.

William Hooper,
Joseph Hewes,
John Penn.

CONSTITUTION OF THE UNITED STATES.

SOUTH-CAROLINA.

Edward Rutledge,
Thomas Heyward, jr.,
Thomas Lynch, jr.
Arthur Middleton.

GEORGIA.

Button Gwinnett,
Lyman Hall,
George Walton.

CONSTITUTION OF THE UNITED STATES.

We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

SECTION 1.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Legislative
powers vested
in congress.

SECTION 2.

1. The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

House of Re-
presentatives,
how compos-
ed.

2. No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Qualifications
of members.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative: and until such enumeration shall be made, the state of New-Hampshire shall be entitled to choose three; Massachusetts eight; Rhode-Island and Providence Plantations

Representa-
tives and di-
rect taxes,
how appor-
tioned.

Enumeration
every ten
years.

Limitation of
ratio.

First appor-
tionment.

one; *Connecticut* five; *New-York* six; *New-Jersey* four; *Pennsylvania* eight; *Delaware* one; *Maryland* six; *Virginia* ten; *North-Carolina* five; *South-Carolina* five; and *Georgia* three.

Writs of election.

Speaker.

Senate, how composed.

Divided into three classes.

Executives of states to make temporary appointments.

Qualifications of members.

Vice-President presiding officer.

President pro tem. & other officers, how chosen.

Sole power to try impeachments.

Extent of judgment in cases of impeachment.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class, shall be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION 4.

1. The times, places, and manner of holding elections

for senators and representatives, shall be prescribed in each state, by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

2. The congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

1. Each house shall be the judge of the elections, returns, and qualifications, of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION 7.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Elections for senators and representatives, how regulated.

Congress shall assemble annually.

Each house judge of the elections of its own members. Quorum.

Each house determine its own rules.

Journals.

Adjournment.

Compensation of members.

Privilege.

Members shall not hold offices, &c.

Revenue bills.

President of
the U. S. his
veto.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases, the votes of both houses, shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned, by the president, within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

Congress have
power to lay
taxes

The congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:
3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:
4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:
6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post-offices and post-roads:

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years:

12. To provide and maintain a navy:

13. To make rules for the government and regulation of the land and naval forces:

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress:

To provide for
organizing the
militia.

16. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings:—And

Exclusive le-
gislation in
the ten miles
square, (Dis-
trict of Co-
lumbia.)

17. To make all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States, or in any department or officer thereof.

To make all
laws necessa-
ry, for carry-
ing into exe-
cution, the
foregoing
powers.

SECTION 9.

Migration or
importation
of certain per-
sons, &c.

1. The migration or importation of such persons as any of the states, now existing, shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight: but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Habeas cor-
pus.

3. No bill of attainder, or ex post facto law, shall be passed.

Ex post facto
law.

4. No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

Direct tax ac-
cording to
census

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation.

No preference,
of ports.

tion of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

Money how to be expended.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time.

No title of nobility granted.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

Powers withheld from the states.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

Powers which the states may exercise with the consent of congress.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE 2.

SECTION 1.

Executive power vested in a President, &c.

Electors.

Congress may determine the time of choosing electors, &c.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. [Annulled.—See amendments, article 12.]

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural born citizen, or a citizen Qualifications of President. of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president,* and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.^t

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

9. "I DO SOLEMNLY SWEAR (or affirm) THAT I WILL FAITHFULLY EXECUTE THE OFFICE OF PRESIDENT OF THE UNITED STATES, AND WILL, TO THE BEST OF MY ABILITY, PRESERVE, PROTECT, AND DEFEND THE CONSTITUTION OF THE UNITED STATES."

SECTION 2.

1. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies

In case of vacancy in the office of President, the Vice President to act, &c.

[* See sec. 9, chap. 109, vol. 2, U. S. laws.]

Compensation of the President \$25,000. [† See chap. 19, vol. 2, U. S. laws.]

Oath.

President's powers. Commander in chief. May require the opinions of the heads of executive departments. Grant reprieves & pardons.

Make treaties Appoint officers.

May fill vacancies, &c.

that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

President, his duties.

May convene congress.

Receive ambassadors.

Commission officers.

Impeachment

1. He shall, from time to time, give to the congress information of the state of the union, and recommend to their consideration, such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION 3.

1. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE 3.

SECTION 1.

1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.*

[*See restriction of this power, amendments art. 11.]

Jurisdiction.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE 4.

SECTION 1.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

SECTION 2.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Citizens' privileges.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Fugitives from justice.

3. No person held to service or labour in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due.

Fugitives from labour.

SECTION 3.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

New states may be admitted into the Union.

2. The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Territory of United States.

Republican form of government guaranteed to the states.

SECTION 4.

1. The United States shall guaranty to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Amendments, how attained.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE 5.

Assumption of debts.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

Constitution, treaties, &c. supreme law of the land.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

Legislators bound by oath to support this constitution.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE 6.

Ratification,

1. The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

ARTICLE 7.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

DELAWARE.

George Read,
Gunning Bedford, jun.
John Dickinson,
Richard Bassett,
Jacob Broom.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

William Samuel Johnson,
Roger Sherman.

MARYLAND.

James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

VIRGINIA.

John Blair,
James Madison, jun.

NORTH-CAROLINA.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

SOUTH-CAROLINA.

John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abraham Baldwin.

Attest.

WILLIAM JACKSON, *Secretary.*

ARTICLE 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Congress prohibited from interfering with religion.

Right to keep
& bear arms.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

No soldier to
be quartered,
&c.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

No search ex-
cept on proba-
ble cause,
oath, &c.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

No person
held to an-
swer for a
crime unless
on present-
ment, &c. ex-
cept in actual
service in time
of war.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Speedy public
trial by jury.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence.

ARTICLE 6.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE 7.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE 8.

ARTICLE 9.

The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE 10.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE 11.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE 12.

1. The electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed, to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the house of representatives shall choose immediately, by ballot, the President. But in choosing the President, the vote shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states, shall be necessary to a choice. And if the house of representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death, or other constitutional disability, of the President.

Restriction of
judicial pow-
er.

Mode of
ing Pres
and Vic
ident.

2. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest

numbers on the list, the senate shall choose the Vice-President: a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice-President of the United States.

ARTICLE 13.

Citizenship
forfeited, &c.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honour, or shall, without the consent of congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

ACT OF VIRGINIA.

An Act to authorize the Delegates of this state in Congress, to convey to the United States in Congress assembled, all the Right of this Commonwealth to the Territory North Westward of the river Ohio.

[PASSED DECEMBER 20, 1783.]

1. WHEREAS the Congress of the United States did, by their act of the sixth day of *September*, in the year one thousand seven hundred and eighty, recommend to the several states in the Union, having claims to waste and unappropriated lands in the Western Country, a liberal cession to the United States, of a portion of their respective claims for the common benefit of the Union:

2. And whereas this Commonwealth did, on the second day of *January*, in the year one thousand seven hundred and eighty-one, yield to the Congress of the United States, for the benefit of the said States, all right, title, and claim, which the said Commonwealth had to the territory North-West of the river *Ohio*, subject to the conditions annexed to the said act of cession:

3. And whereas the United States in Congress assembled, have, by their Act of the thirteenth of *September* last, stipulated the terms on which they agree to accept the cession of this state, should the Legislature approve thereof, which terms, although they do not come fully up to the propositions of this Commonwealth, are conceived on the whole, to approach so nearly to them, as to induce this state to accept thereof, in full confidence that Congress will, in justice to this state for the liberal cession she hath made,

earnestly press upon the other states claiming large tracts of waste and uncultivated territory, the propriety of making cessions equally liberal, for the common benefit and support of the Union:

Be it enacted by the General Assembly, That it shall and may be lawful for the Delegates of this state to the congress of the United States, or such of them as shall be assembled

Delegates em-
powered to
convey.

in congress, and the said Delegates, or such of them so assembled, are hereby fully authorized and empowered, for and on behalf of this state, by proper deed or instrument in writing, under their hands and seals, to convey, transfer, assign, and make over unto the United States in congress assembled, for the benefit of the said states, all right, title, and claim, as well of soil as jurisdiction, which this Commonwealth hath to the territory or tract of country within the limits of the *Virginia* charter, situate, lying, and being to the North-west of the river *Ohio*, subject to the terms and conditions contained in the before recited Act of Congress of the thirteenth day of *September* last, that is to say: Upon condition that the territory so ceded shall be laid out and formed into states, containing suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit; and that the states so formed, shall be distinct republican states, and admitted members of the Federal Union, having the same rights of sovereignty, freedom, and independence, as the other states; that the necessary and reasonable expenses incurred by this state in subduing any *British* posts, or in maintaining forts or garrisons within and for the defence, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States; and that one commissioner shall be appointed by Congress, one by this commonwealth, and another by those two commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this state, which they shall judge to be comprised within the intent and meaning of the act of congress of the tenth of *October*, one thousand seven hundred and eighty, respecting such expenses. That the *French* and *Canadian* inhabitants and other settlers of the *Kaskaskies*, *St. Vincents*, and the neighbouring villages, who have professed themselves citizens of *Virginia*, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties. That a quantity not exceeding one hundred and fifty thousand acres of land, promised by this state, shall be allowed and granted to the then Colonel, now General *George Rogers Clarke*, and to the officers and soldiers of his regiment, who marched with him when the posts of *Kaskaskies* and *St. Vincents* were reduced, and to

Conditions.

Reservations.

the officers and soldiers that have been since incorporated into the said regiment, to be laid off in one tract, the length of which is not to exceed double the breadth, in such place on the north-west side of the *Ohio* as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion according to the laws of *Virginia*. That in case the quantity of good lands on the south-east side of the *Ohio*, upon the waters of *Cumberland* river, and between the *Green* river and *Tenisssee* river, which have been reserved by law for the *Virginia* troops upon Continental establishment, should, from the *North-Carolina* line bearing in further upon the *Cumberland* lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands, to be laid off between the rivers *Scioto* and *Little Miami*, on the north-west side of the river *Ohio*, in such proportions as have been engaged to them by the laws of *Virginia*. That all the lands within the territory so ceded to the United States, and not reserved for or appropriated to any of the beforementioned purposes, or disposed of in bounties to the officers and soldiers of the *American army*, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the confederation or federal alliance of the said states, *Virginia* inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatsoever. *Provided*, that the trust hereby reposed in the delegates of this state shall not be executed, unless three of them, at least, are present in congress.*

All the lands ceded to be a common fund for the members of the federal alliance, and for no other use.

Three members at least to execute the trust.

*Agreeably to the above recited act, the territory therein alluded to, was, on the first day of March 1784, transferred to the United States, by deed, signed by Thomas Jefferson, Samuel Hardy, Arthur Lee and James Monroe, then delegates in congress, from the commonwealth of *Virginia*. —[See Vol. I. page 472, U. S. Laws.]

ACT OF VIRGINIA.

An Act concerning the Territory ceded by this Commonwealth to the United States.

[PASSED DECEMBER 20, 1788.]

1. WHEREAS the United States in congress assembled, did, on the seventh day of *July*, in the year of our Lord one thousand seven hundred and eighty-six, state certain reasons, shewing that a division of the territory which hath been ceded to the said United States by this commonwealth,

Preamble,

into states, in conformity to the terms of cession, should the same be adhered to, would be attended with many inconveniences, and did recommend a revision of the act of cession, so far as to empower congress to make such a division of the said territory into distinct and republican states, not more than five nor less than three in number, as the situation of that country and future circumstances might require: And the said United States in congress assembled, have, in an ordinance for the government of the territory north-west of the river *Ohio*, passed on the thirteenth of *July*, one thousand seven hundred and eighty-seven, declared the following as one of the articles of compact between the original states, and the people and states in the said territory, viz:

[Here the fifth article of compact of the ordinance of congress of 13th July 1787, is recited verbatim.]

And it is expedient that this commonwealth do assent to the proposed alteration so as to ratify and confirm the said article of compact between the original states, and the people and states in the said territory:

2. Be it therefore enacted by the General Assembly, That the afore-recited Article of compact between the original states, and the people and states in the territory north-west of *Ohio* river, be, and the same is hereby ratified and confirmed, any thing to the contrary, in the deed of cession of the said territory by this commonwealth to the United States, notwithstanding.

An article of the compact between the U. S. and the people and states N.W. of the *Ohio*, ratified by this commonwealth.

ORDINANCE OF CONGRESS.

In Congress, July 13, 1787.

An ordinance for the government of the territory of the United States north-west of the river *Ohio*.

Be it ordained by the United States in Congress assembled, That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of congress, make it expedient.

Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grand child to take the share of their deceased parent in equal parts among them: and where there shall be

Rules of inheritance, &c.

no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parents' share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as herein after mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release; or bargain and sale, signed, sealed, and delivered, by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents, and the neighbouring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Governor.

Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by congress: he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

Secretary.

There shall be appointed, from time to time, by congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months to the secretary of congress: There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres

of land, while in the exercise of their offices; and their commissions shall continue in force during good behaviour.

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original states, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to congress, from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

The governor for the time being, shall be commander in chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly; provided that, for every five hundred free male inhabitants, there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature; provided, that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and in either case, shall likewise hold

Adoption and publication of laws.

Appointment of magistrates &c.

Civil divisions of the district.

Right of representation; general assembly, &c.

in his own right, in fee simple, two hundred acres of land within the same; provided also, that a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by congress; any three of whom to be a quorum: and the members of the council shall be nominated and appointed in the following manner, to wit:—As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to congress; five of whom congress shall appoint and commission to serve as aforesaid: and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to congress; one of whom congress shall appoint and commission for the residue of the term: And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to congress; five of whom congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve, the general assembly, when in his opinion it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office; the governor before the president of congress, and all other

Constitution
of the legisla-
tive power,
&c.

Oath of fidelity
and of of-
fice to be ta-
ken.

officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a Delegate to congress, who shall have a seat in congress, with a right of debating, but not of voting during this temporary government.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared, by the authority aforesaid, That the following articles shall be considered as articles of compact, between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit:

ART. 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ART. 2. The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with, or affect, private contracts or engagements, bona fide, and without fraud, previously formed.

ART. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their proper-

ty, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. 4. The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states, as in the original states, within the time agreed upon by the United States in congress assembled. The legislatures of those districts, or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary, for securing the title in such soil, to the bona fide purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ART. 5. There shall be formed in the said territory, not less than three, nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession, and consent to the same,* shall become fixed and established as follows, to wit: The western state in the said territory, shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the lake of the Woods and Mississippi. The middle states shall be bounded by the said direct line, the Wabash, from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern states shall be bounded by the last mentioned

[*See consent of Virginia, page 23.]

direct line, the Ohio, Pennsylvania, and the said territorial line: provided however, and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that, if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory, which lies north of an east and west line drawn through the southerly bend or extreme of lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United States, on an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government: provided the constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

ART. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: provided always, that any person escaping into the same, from whom labour or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labour or service as aforesaid.

ACT OF CONGRESS.

An act to provide for the government of the territory north-west of the river Ohio.*

[APPROVED, AUGUST 7, 1789.]

WHEREAS, In order that the ordinance of the United States in congress assembled, for the government of the territory north-west of the river Ohio, may continue to have full effect, it is requisite that certain provisions should be made, so as to adapt the same to the present constitution of the United States:

SEC. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases in which, by the said ordinance, any information is to be given, or communication made, by the

*By act of May 7, 1800, the Indiana territory was formed, and on the 3d February 1809, divided into two separate governments. By act of April 30, 1802, the state of Ohio was formed. [See vols. 3 & 4, pages 367, 496, and 198, *United States' laws*.]

Governor to make communication to the president of the U. S. President and senate to appoint territorial officers.

President to commission; and remove.

In case of death, removal, &c. the secretary to execute the power of governor during the vacancy.

governor of the said territory, to the United States in congress assembled, or to any of their officers, it shall be the duty of the said governor to give such information and to make such communication to the president of the United States; and the president shall nominate, and, by and with the advice and consent of the Senate, shall appoint all officers which, by the said ordinance, were to have been appointed by the United States in Congress assembled; and all officers, so appointed, shall be commissioned by him; and in all cases where the United States in Congress assembled, might, by the said ordinance, revoke any commission or remove from any office, the president is hereby declared to have the same powers of revocation and removal.

SEC. 2. And be it further enacted, That in case of the death, removal, resignation, or necessary absence, of the governor of the said territory, the secretary thereof shall be, and he is hereby authorized and required to execute all the powers, and perform all the duties of the governor, during the vacancy occasioned by the removal, resignation or necessary absence, of the said governor.

ACT OF CONGRESS.

An Act to enable the people of the Indiana territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states.

[APPROVED, APRIL 19, 1816.]

Inhabitants authorized to form a constitution, &c.

Boundaries of the state.

SEC. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of the territory of Indiana be, and they are hereby authorized, to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the Union upon the same footing with the original states, in all respects whatever.

SEC. 2. And be it further enacted, That the said state shall consist of all the territory included within the following boundaries, to wit: Bounded on the east by the meridian line which forms the western boundary of the state of Ohio; on the south, by the river Ohio, from the mouth of the Great Miami river, to the mouth of the river Wabash; on the west, by a line drawn along the middle of the Wabash, from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the north

western shore of the said river; and from thence by a due north line, until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of lake Michigan; on the north, by the said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the state of Ohio; *Provided*, That the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and remain as now prescribed by the ordinance for the government of the territory north-west of the river Ohio: *Provided also*, That the said state shall have concurrent jurisdiction on the river Wabash, with the state to be formed west thereof, so far as the said river shall form a common boundary to both.

SEC. 3. And be it further enacted, That all male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said territory at least one year previous to the day of election, and shall have paid a county or territorial tax; and all persons having in other respects the legal qualifications to vote for representatives in the general assembly of the said territory, be, and they are hereby authorized to choose representatives to form a convention, who shall be apportioned amongst the several counties within the said territory, according to the apportionment made by the legislature thereof, at their last session, to wit: From the county of Wayne, four representatives; from the county of Franklin, five representatives; from the county of Dearborn, three representatives; from the county of Switzerland, one representative; from the county of Jefferson, three representatives; from the county of Clark five representatives; from the county of Harrison, five representatives; from the county of Washington, five representatives; from the county of Knox, five representatives; from the county of Gibson, four representatives; from the county of Posey, one representative; from the county of Warrick, one representative; and from the county of Perry, one representative. And the election for the representatives aforesaid, shall be holden on the second Monday of May, one thousand eight hundred and sixteen, throughout the several counties in the said territory; and shall be conducted in the same manner, and under the same penalties, as prescribed by the laws of said territory, regulating elections therein for members of the House of Representatives.

SEC. 4. And be it further enacted, That the members of the convention, thus duly elected, be, and they are hereby authorized, to meet at the seat of the government of the said territory on the second Monday of June next; which convention, when met, shall first determine, by a majority of the whole number elected, whether it be, or be not expe-

Qualifications of electors.

Apportionment.

Convention, time & place of meeting.

Its powers and duties.

Proviso.

One representative in congress.

Propositions to the convention.

Salt springs reserved.

Five per cent. for roads and canals.

dient at that time, to form a constitution and state government for the people within the said territory; and if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and state government: or if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government, which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance: and shall then form, for the people of said territory, a constitution and state government: *Provided*, That the same, whenever formed, shall be republican, and not repugnant to those articles of the ordinance of the thirteenth of July, one thousand seven hundred and eighty seven, which are declared to be irrevocable between the original states and the people and states of the territory north-west of the river Ohio; excepting so much of said articles as relate to the boundaries of the states therein to be formed.

SEC. 5. And be it further enacted, That until the next general census shall be taken, the said state shall be entitled to one representative in the House of Representatives of the United States.

SEC. 6. And be it further enacted, That the following propositions be, and the same are hereby offered to the convention of the said territory of Indiana, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States.

First. That the section numbered sixteen, in every township, and when such section has been sold, granted, or disposed of, other lands, equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools.

Second. That all salt springs within the said territory, and the land reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding, in the whole, the quantity contained in thirty-six entire sections shall be granted to the said state, for the use of the people of the said state, the same to be used under such terms, conditions, and regulations as the legislature of the said state shall direct: provided the said legislature shall never sell nor lease the same, for a longer period than ten years at any one time.

Third. That five per cent. of the nett proceeds of the lands lying within the said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of

ORDINANCE.

which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state under the direction of Congress.

Fourth. That one entire township, which shall be designated by the President of the United States, in addition to the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state, to be appropriated solely to the use of such seminary by the said legislature.

Fifth. That four sections of land be, and the same are hereby granted to the said state, for the purpose of fixing their seat of government thereon, which four sections shall, under the direction of the legislature of said state, be located at any time, in such township and range, as the legislature aforesaid may select, on such lands as may hereafter be acquired by the United States, from the Indian tribes within the said territory: *Provided*, That such locations shall be made prior to the public sale of the lands of the United States, surrounding such location: *And provided always*, That the five foregoing propositions, herein offered, are, on the conditions that the convention of the said state shall provide by an ordinance irrevocable, without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of December next, shall be and remain exempt from any tax, laid by order or under any authority of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years, from and after the day of sale.

Seat of government donation.

Lands sold by the U. S. to be exempt from taxation for five years.

ORDINANCE.

BE IT ORDAINED by the representatives of the people of the Territory of Indiana, in Convention met at Corydon, on Monday the tenth day of June, in the year of our Lord eighteen hundred and sixteen, That we do, for ourselves and our posterity, agree, determine, declare, and ordain, that we will, and do hereby accept the propositions of the Congress of the United States, as made and contained in their act of the nineteenth day of April, eighteen hundred and sixteen, entitled "An act to enable the people of the Indiana territory to form a state government and constitution, and for the admission of such state into the Union, on an equal footing with the original states."

And we do, further for ourselves and our posterity, hereby ratify, confirm, and establish, the boundaries of the said

Propositions of congress accepted.

state of Indiana, as fixed, prescribed, laid down, and established, in the act of Congress aforesaid; and we do also, further for ourselves and our posterity, hereby agree, determine, declare and ordain, that each and every tract of land sold by the United States, lying within the said state, and which shall be sold from and after the first day of December next, shall be and remain exempt from any tax laid by order or under any authority of the said state of Indiana, or by or under the authority of the general assembly thereof, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale of any such tract of land: and we do, moreover, for ourselves and our posterity, hereby declare and ordain, that this ordinance, and every part thereof, shall forever be and remain irrevocable and inviolate, without the consent of the United States, in Congress assembled, first had and obtained for the alteration thereof, or any part thereof.

Lands sold by
the U. S. ex-
empt from
taxation.

This ordin-
ance irrevoc-
able.

JONATHAN JENNINGS,
President of the Convention.

June 29th, 1816.

Attest, WILLIAM HENDRICKS, *Secretary.*

CONSTITUTION OF INDIANA.

We the representatives of the people of the territory of Indiana, in convention, met at Corydon, on Monday the tenth day of June, in the year of our Lord eighteen hundred and sixteen, and of the Independence of the United States, the fortieth, having the right of admission into the general government, as a member of the Union, consistent with the constitution of the United States, the ordinance of Congress of one thousand seven hundred and eighty-seven, and the law of Congress, entitled "An act to enable the people of the Indiana territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states," in order to establish justice, promote the welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish the following constitution or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of the state of INDIANA.

Preamble.

ARTICLE I.

SEC. 1. That the general, great, and essential principles

of liberty and free government may be recognized, and unalterably established: WE DECLARE, That all men are born Natural rights equally free and independent, and have certain natural, inherent, and unalienable rights; among which are, the enjoying and defending life and liberty, and of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

SEC. 2. That all power is inherent in the people; and all free governments are founded on their authority, and instituted for their peace, safety, and happiness. For the advancement of these ends, they have, at all times, an unalienable and indefeasible right to alter or reform their government in such manner as they may think proper.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences: That no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent: That no human authority can, in any case whatever, control or interfere with the rights of conscience: And that no preference shall ever be given by law to any religious societies, or modes of worship; and no religious test shall be required as a qualification to any office of trust or profit.

SEC. 4. That elections shall be free and equal.

SEC. 5. That in all civil cases, where the value in controversy shall exceed the sum of twenty dollars, and in all criminal cases, except in petit misdemeanors, which shall be punished by fine only, not exceeding three dollars, in such manner as the legislature may prescribe by law, the right of trial by jury shall remain inviolate.

SEC. 6. That no power of suspending the operation of the laws shall be exercised, except by the legislature, or its authority.

SEC. 7. That no man's particular services shall be demanded, or property taken or applied to public use, without the consent of his representatives, or without a just compensation being made therefor.

SEC. 8. The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

SEC. 9. That the printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak,

All power in-
herent in the
people.

Freedom of
worship.

No religious
test.

Trial by jury
in civil as well
as criminal
cases.

Compensa-
tion for serv-
ices and pro-
perty.

No search un-
less on proba-
ble cause,
oath, &c.

Freedom of
the press and
of speech.

write, and print, on any subject, being responsible for the abuse of that liberty.

Prosecutions
for the publi-
cation of pa-
pers, libels, &c.

SEC. 10. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for the public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

Justice with-
out denial or
delay.

No person put
to answer, &c.
but by pre-
sentment, in-
dictment, or
impeachment

SEC. 11. That all courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by the due course of law; and right and justice administered without denial or delay.

SEC. 12. That no person arrested, or confined in jail, shall be treated with unnecessary rigour, or be put to answer any criminal charge but by presentment, indictment, or impeachment.

Speedy public
trial by jury.

Bail.

Habeas cor-
pus.

Debtor not to
be continued
in prison.

No ex post
facto law.

SEC. 13. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favour; and in prosecutions by indictment or presentment, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed; and shall not be compelled to give evidence against himself, nor shall he be twice put in jeopardy for the same offence.

SEC. 14. That all persons shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion, the public safety may require it.

SEC. 15. Excessive bail shall not be required, excessive fines shall not be imposed, nor cruel and unusual punishments inflicted.

SEC. 16. All penalties shall be proportioned to the nature of the offence.

SEC. 17. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate, for the benefit of his creditor or creditors, in such manner as shall be prescribed by law.

SEC. 18. No ex post facto law, nor any law impairing the validity of contracts, shall ever be made, and no conviction shall work corruption of blood, nor forfeiture of estate.

SEC. 19. That the people have a right to assemble together, in a peaceable manner, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances.

SEC. 20. That the people have a right to bear arms for Right to bear arms.

SEC. 21. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

SEC. 22. That the legislature shall not grant any title of nobility, or hereditary distinctions, nor create any office, the appointment to which shall be for a longer term than good behaviour.

SEC. 23. That emigration from the state shall not be prohibited.

SEC. 24. To guard against any encroachments on the rights herein retained, we declare, that every thing in this article, is excepted out of the general powers of government, and shall forever remain inviolable.

ARTICLE II.

The powers of the government of Indiana, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another: And no person, or collection of persons, being of one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

Powers of the
government
divided into
three depart-
ments.

ARTICLE III.

SEC. 1. The legislative authority of this state shall be vested in a general assembly, which shall consist of a senate and house of representatives, both to be elected by the people.

Legislative
authority,
how vested.

SEC. 2. The general assembly may, within two years after their first meeting, and shall, in the year eighteen hundred and twenty, and every subsequent term of five years, cause an enumeration to be made of all the white male inhabitants above the age of twenty-one years. The number of representatives shall, at the several periods of making such enumeration, be fixed by the general assembly, and apportioned among the several counties, according to the number of white male inhabitants above twenty-one years of age, in each; and shall never be less than twenty-five nor greater than thirty-six, until the number of white male inhabitants above twenty-one years of age, shall be twenty-two thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-six nor exceed one hundred.

Enumeration
every 5 years.

SEC. 3. The representatives shall be chosen annually, by Chosen annu-
ally.
the qualified electors of each county, respectively, on the first Monday of August.

Represen-
tatives, how ap-
portioned.

SEC. 4. No person shall be a representative, unless he Qualifications shall have attained the age of twenty-one years; and shall be a citizen of the United States, and an inhabitant of this state; and shall also have resided within the limits of the county in which he shall be chosen, one year next preceding his election, if the county shall have been so long erected; but if not, then within the limits of the county or counties out of which it shall have been taken, unless he shall have been absent on the public business of the United States, or of this state, and shall have paid a state or county tax.

Senators, how chosen and classed.

SEC. 5. The senators shall be chosen for three years, on the first Monday in August, by the qualified voters for representatives; and on their being convened, in consequence of the first election, they shall be divided by lot, from their respective counties or districts, as near as can be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the first year; and the second class at the expiration of the second year; and of the third class, at the expiration of the third year; so that one third thereof, as near as possible, may be annually chosen, forever thereafter.

When & how apportioned.

SEC. 6. The number of senators shall, at the several periods of making the enumeration before mentioned, be fixed by the general assembly, and apportioned among the several counties or districts, to be established by law, according to the number of white male inhabitants of the age of twenty-one years in each, and shall never be less than one third, nor more than one half of the number of representatives.

Qualifications

SEC. 7. No person shall be a senator unless he shall have attained the age of twenty-five years, and shall be a citizen of the United States, and shall, next preceding the election, have resided two years in the state, the last twelve months of which, in the county or district in which he may be elected, if the county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken; unless he shall have been absent on the public business of the United States, or of this state, and shall, moreover, have paid a state or county tax.

Speaker.

SEC. 8. The house of representatives, when assembled, shall choose a speaker, and its other officers: and the senate shall choose its officers, except the president; and each shall be judges of the qualifications and elections of its members, and sit upon its own adjournments. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

Two-thirds of each house, a quorum.

Journal.

SEC. 9. Each house shall keep a journal of its proceed-

ings, and publish them. The yeas and nays of the members, on any question, shall, at the request of any two of them, be entered on the journals.

SEC. 10. Any one member of either house shall have liberty to dissent from, and protest against, any act or resolution, which he may think injurious to the public, or any individual or individuals, and have the reason of his dissent entered on the journals.

SEC. 11. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member, but May expel a not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

SEC. 12. When vacancies happen in either branch of the general assembly, the governor, or the person exercising the power of governor, shall issue writs of election to fill such vacancies.

SEC. 13. Senators and representatives shall in all cases except treason, felony, or breach of the peace, be privileged from arrest, during the session of the general assembly, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

SEC. 14. Each house may punish, by imprisonment, during their session, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behaviour in their presence; provided such imprisonment shall not, at any one time, exceed twenty-four hours.

SEC. 15. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as in the opinion of the house, may require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting.

SEC. 16. Bills may originate in either house, but may be altered, amended, or rejected, by the other.

SEC. 17. Every bill shall be read on three different days in each house, unless, in case of urgency, two-thirds of the house, where such bill may be depending, shall deem it expedient to dispense with this rule: And every bill, having passed both houses, shall be signed by the president and speaker of their respective houses.

SEC. 18. The style of the laws of this state shall be, "Be Style of the it enacted by the General Assembly of the state of Indiana." laws.

SEC. 19. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject, as in other bills.

SEC. 20. No person, holding any office under the authori-

Persons not eligible.

ty of the president of the United States, or of this state, militia officers excepted, shall be eligible to a seat in either branch of the general assembly, unless he resign his office previous to his election; nor shall any member of either branch of the general assembly, during the time for which he is elected, be eligible to any office, the appointment of which is vested in the general assembly: *Provided*, That nothing in this constitution shall be so construed as to prevent any member of the first session of the first general assembly from accepting any office that is created by this constitution, or the constitution of the United States, and the salaries of which are established.

Sec. 21. No money shall be drawn from the treasury but in consequence of appropriations made by law.

Sec. 22. An accurate statement of the receipts and expenditures of the public money shall be attached to, and published with, the laws, at every annual session of the general assembly.

Sec. 23. The house of representatives shall have the sole power of impeaching; but a majority of all the members elected must concur in such impeachment. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath or affirmation, to do justice according to law and evidence. No person shall be convicted without the concurrence of a majority of all the senators elected.

Sec. 24. The governor, and all civil officers of the state, shall be removed from office, on impeachment for and conviction of, treason, bribery, or other high crimes and misdemeanors; but judgment, in such cases, shall not extend further than removal from office, and disqualification to hold any office of honour, profit or trust, under this state. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment, according to law.

Sec. 25. The first session of the general assembly shall commence on the first Monday of November next; and forever after, the general assembly shall meet on the first Monday in December, in every year, and at no other period, unless directed by law, or provided for by this constitution.

Sec. 26. No person, who hereafter may be a collector, or holder of public money, shall have a seat in either house of the general assembly, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

ARTICLE IV.

Sec. 1. The supreme executive power of this state shall be vested in a governor, who shall be styled, The Governor of the state of Indiana.

Money how drawn from the treasury. Statement of receipts and expenditures, how published

Impeachment

For what crimes, & extent of judgment therein.

Sessions, when held.

Holder of public money not entitled to a seat, in either House of the general assembly.

Executive power vested in a Governor.

Sec. 2. The governor shall be chosen by the qualified electors, on the first Monday in August, at the places where they shall respectively vote for representatives. The returns of every election for governor shall be sealed up, and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall open and publish them in the presence of both houses of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal, and highest in votes, one of them shall be chosen governor by the joint vote of the members of both houses. Contested elections shall be determined by a committee to be selected from both houses of the general assembly, and formed and regulated in such manner as shall be directed by law.

Sec. 3. The governor shall hold his office during three years, from and after the third day of the first session of the general assembly, next ensuing his election, and until a successor shall be chosen and qualified, and shall not be capable of holding it longer than six years in any term of nine years.

Sec. 4. He shall be at least thirty years of age, and shall have been a citizen of the United States ten years, and have resided in the state five years next preceding his election; unless he shall have been absent on the business of this state, or of the United States: *Provided*, That this shall not disqualify any person from the office of governor, who shall be a citizen of the United States, and shall have resided in the Indiana territory two years next preceding the adoption of this constitution.

Sec. 5. No member of congress, or person holding any office under the United States, or this state, shall exercise the office of governor or lieutenant governor.

Sec. 6. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

Sec. 7. He shall be commander in chief of the army and navy of this state, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he shall be advised so to do by a resolution of the general assembly.

Sec. 8. He shall nominate, and by and with the advice and consent of the senate, appoint and commission all officers, the appointment of which is not otherwise directed by this constitution; and all offices which may be created by the general assembly, shall be filled in such manner as may be directed by law.

Sec. 9. Vacancies that may happen in offices, the appointment of which is vested in the governor and senate, or

How & when chosen.

Term of office.

Qualifications

Who shall not hold the office of governor, &c.

Compensation.

Commander in chief.

Nominate, appoint, & commission officers.

in the general assembly, shall be filled by the governor, during the recess of the general assembly, by granting commissions that shall expire at the end of the next session.

Remit fines, & grant reprieves.

SEC. 10. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachments.

SEC. 11. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

SEC. 12. He shall, from time to time, give to the general assembly information of the affairs of the state, and recommend to their consideration such measures as he shall deem expedient.

SEC. 13. He may, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the time of their next annual session.

SEC. 14. He shall take care that the laws be faithfully executed.

SEC. 15. A lieutenant governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant governor.

SEC. 16. He shall, by virtue of his office, be president of the senate, have a right, when in committee of the whole, to debate, and vote on all subjects, and when the senate are equally divided, to give the casting vote.

SEC. 17. In case of impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant governor shall exercise all the powers and authority appertaining to the office of governor, until another be duly qualified, or the governor absent or impeached, shall return or be acquitted.

SEC. 18. Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president for that occasion. And if, during the vacancy of the office of governor, the lieutenant governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the president of the senate pro tem. shall, in like manner, administer the government, until he shall be superseded by a governor, or lieutenant governor. The lieutenant governor, while he acts as president of the senate, shall receive for

Make communications to the general assembly.

Convene the Legislature.

Lieutenant Governor, how & when chosen.

He shall be president of the senate.

When acting governor.

President of senate pro tem.

his services, the same compensation which shall, for the same period, be allowed to the speaker of the house of representatives, and no more: And during the time he administers the government, as governor, shall receive the same compensation which the governor would have received and been entitled to, had he been employed in the duties of his office, and no more.

His compensation.

SEC. 19. The president pro tempore of the senate, during the time he administers the government, shall receive, in like manner, the same compensation which the governor would have received had he been employed in the duties of his office, and no more.

SEC. 20. If the lieutenant governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state, during the recess of the general assembly, it shall be the duty of the secretary of state, for the time being, to convene the senate for the purpose of choosing a president pro tempore.

Secretary of State may convene the senate, to choose a president pro tem.

How chosen.

SEC. 21. A secretary of state shall be chosen by the joint ballot of both houses of the general assembly, and be commissioned by the governor for four years, or until a new secretary be chosen and qualified. He shall keep a fair register, and attest all the official acts and proceedings of the governor; and shall, when required, lay the same, and all papers, minutes, and vouchers, relative thereto, before either house of the general assembly; and shall perform such other duties as may be enjoined him by law.

His duties.

SEC. 22. Every bill which shall have passed both houses of the general assembly, shall be presented to the governor: if he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it shall have originated, who shall enter the objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that house, it shall be a law: but, in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor, within five days (Sundays excepted) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it; unless the general adjournment prevents its return; in which case it shall be a law, unless sent back within three days after their next meeting.

Bills to be presented to the governor, &c.

SEC. 23. Every resolution to which the concurrence of both houses may be necessary, shall be presented to the governor, and before it shall take effect, be approved by

Joint resolutions to receive the same.

sanction as
bills.

him, or being disapproved, shall be repassed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.

Treasurer and
Auditor, now
chosen.

SEC. 24. There shall be elected, by joint ballot of both houses of the general assembly, a treasurer, and auditor, whose powers and duties shall be prescribed by law, and who shall hold their offices three years, and until their successors be appointed and qualified.

Sheriff & cor-
oner how cho-
sen, &c.

SEC. 25. There shall be elected in each county, by the qualified electors thereof, one sheriff, and one coroner, at the times and places of holding elections for members of the general assembly. They shall continue in office two years, and until successors shall be chosen and duly qualified: *Provided*, That no person shall be eligible to the office of sheriff more than four years, in any term of six years.

Seal of state.

SEC. 26. There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and shall be called the seal of the state of Indiana.

Judiciary pow-
er, how vested.

SEC. 1. The judiciary power of this state, both as to matters of law and equity, shall be vested in one supreme court, in circuit courts, and in such other inferior courts as the general assembly may from time to time direct and establish.

Supreme
court to con-
sist of three
judges.
Jurisdiction.

SEC. 2. The supreme court shall consist of three judges, any two of whom shall form a quorum, and shall have appellate jurisdiction only, which shall be co-extensive with the limits of the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law: Provided nothing in this article shall be so construed as to prevent the general assembly from giving the supreme court original jurisdiction in capital cases, and cases in chancery, where the president of the circuit court may be interested or prejudiced.

Circuit courts
each to consist
of a president
and two asso-
ciates.

Jurisdiction.

SEC. 3. The circuit courts shall each consist of a president, and two associate judges. The state shall be divided by law into three circuits, for each of which a president shall be appointed, who, during his continuance in office, shall reside therein. The president and associate judges, in their respective counties, shall have common law and chancery jurisdiction, as also complete criminal jurisdiction, in all such cases, and in such manner as may be prescribed by law. The president alone, in the absence of the associate judges, or the president and one of the associate judges, in the absence of the other, shall be competent to hold a court, as also the two associate judges, in the absence of the president, shall be competent to hold a court, except in capital cases, and cases in chancery: *Provided*, That no-

ARTICLE V.

thing herein contained shall prevent the general assembly from increasing the number of circuits, and presidents, as the exigencies of the state may from time to time require.

SEC. 4. The judges of the supreme court, the circuit, *Judges, their term of office.* and other inferior courts, shall hold their offices during the term of seven years, if they shall so long behave well, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office.

SEC. 5. The Judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state, as also the presidents of the circuit courts in their respective circuits, and the associate judges in their respective counties. *Conservators of the peace.*

SEC. 6. The supreme court shall hold its sessions at the Courts, where holden. seat of government, at such times as shall be prescribed by law: And the circuit courts shall be held in the respective counties as may be directed by law.

SEC. 7. The judges of the supreme court shall be appointed by the governor, by and with the advice and consent of the senate. The presidents of the circuit courts shall be appointed by joint ballot of both branches of the general assembly; and the associate judges of the circuit courts shall be elected by the qualified electors in the respective counties. *Judges, how appointed.*

SEC. 8. The supreme court shall appoint its own clerk, and the clerks of the circuit court, in the several counties, shall be elected by the qualified electors in the several counties; but no person shall be eligible to the office of clerk of the circuit court in any county, unless he shall first have obtained, from one or more of the judges of the supreme court, or from one or more of the presidents of the circuit courts, a certificate, that he is qualified to execute the duties of the office of clerk of the circuit court: *Provided*, That nothing herein contained shall prevent the circuit courts, in each county, from appointing a clerk pro tem, until a qualified clerk may be duly elected: *And provided also*, That the said clerks respectively, when qualified and elected, shall hold their offices seven years, and no longer, unless re-appointed. *Clerks, how appointed, &c.*

SEC. 9. All clerks shall be removable by impeachment, as in other cases.

SEC. 10. When any vacancies happen in any of the courts, occasioned by the death, resignation, or removal from office, of any judge of the supreme or circuit courts, Successors of or any of the clerks of the said courts, a successor shall be judges and clerks, to be appointed in the same manner as herein before prescribed, appointed for who shall hold his office for the period which his predecessor had to serve, and no longer, unless re-appointed. *residue of terms.*

Style of process.

SEC. 11. The style of all process shall be, "The state of Indiana." All prosecutions shall be carried on in the name, and by the authority of the state of Indiana; and all indictments shall conclude, against the peace and dignity of the same.

Justices of the peace.

SEC. 12. A competent number of justices of the peace shall be elected by the qualified electors in each township, in the several counties; and shall continue in office five years, if they shall so long behave well; whose powers and duties shall, from time to time, be regulated and defined by law.

Elections, who entitled to vote.

SEC. 1. In all elections, not otherwise provided for by this constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who has resided in the state one year immediately preceding such election, shall be entitled to vote, in the county where he resides; except such as shall be enlisted in the army of the United States, or their allies.

By ballot.

SEC. 2. All elections shall be by ballot: *Provided*, That the general assembly may, (if they deem it more expedient) at their session in eighteen hundred and twenty-one, change the mode, so as to vote *viva voce*; after which time it shall remain unalterable.

Electors free from arrest.

SEC. 3. Electors shall, in all cases, except treason, felony, or breach of the peace, be free from arrest, in going to, during their attendance at, and in returning home from elections.

Persons infamous, not eligible, &c.

SEC. 4. The general assembly shall have full power to exclude from electing or being elected, any person convicted of any infamous crime.

Right of suffrage not affected by temporary absence.

SEC. 5. Nothing in this article shall be so construed as to prevent citizens of the United States, who were actual residents at the time of adopting this constitution, and who, by the existing laws of this territory, are entitled to vote, or persons who have been absent from home on a visit, or necessary business, from the privilege of electors.

Militia to be armed, equipped, &c. according to law.

SEC. 1. The militia of the state of Indiana shall consist of all free, able bodied male persons, negroes, mulattoes, and Indians excepted, resident in the said state, between the ages of eighteen and forty-five years; except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this state; and shall be armed, equipped, and trained, as the general assembly may provide by law.

Persons conscientiously

SEC. 2. No person or persons conscientiously scrupulous of bearing arms, shall be compelled to do militia duty: *Pro-*

sided, Such person or persons shall pay an equivalent for scrupulous, exempt, by paying an equivalent: which equivalent shall be collected annually by a civil officer, and be hereafter fixed by law, and shall be equal, as near as may be, to the lowest fines assessed on those privates in the militia who may neglect or refuse to perform militia duty.

SEC. 3. Captains and subalterns shall be elected by those persons, in their respective company districts, who are subject to perform militia duty; and the captain of each company shall appoint the non-commissioned officers to said company.

SEC. 4. Majors shall be elected by those persons, within the bounds of their respective battalion districts, subject to perform militia duty: and colonels shall be elected by those persons, within the bounds of their respective regimental districts, subject to perform militia duty.

SEC. 5. Brigadier Generals shall be elected by the commissioned officers within the bounds of their respective brigades; and major-generals shall be elected by the commissioned officers within the bounds of their respective divisions.

SEC. 6. Troops and squadrons of cavalry, and companies of artillery, riflemen, grenadiers, or light infantry, may be formed in the said state, in such manner as shall be prescribed by law: *Provided however*, That every troop or squadron of cavalry, company of artillery, riflemen, grenadiers, or light infantry, which may hereafter be formed within the said state, shall elect their own officers.

SEC. 7. The governor shall appoint the adjutant-general and quarter master generals, as also his aids-de-camp. *Staff of governor.*

SEC. 8. Major-generals shall appoint their aids-de-camp, and all other division staff officers; brigadier generals shall appoint their brigade majors, and all other brigade staff officers; and colonels shall appoint their regimental staff officers.

SEC. 9. All militia officers shall be commissioned by the governor, and shall hold their commissions during good behaviour, or until they shall arrive at the age of sixty years.

SEC. 10. The general assembly shall, by law, fix the method of dividing the militia of the said state into divisions, brigades, regiments, battalions and companies, and shall also fix the rank of all staff officers.

Every twelfth year after this constitution shall have taken effect, at the general election held for governor, there shall be a poll opened, in which the qualified electors of the state, shall express, by vote, whether they are in favour of calling a convention or not; and if there should be a majority of all the votes given at such election, in favour of a con-

Amendments, how attained.

vention, the governor shall inform the next general assembly thereof, whose duty it shall be, to provide by law, for the election of the members to the convention, the number thereof, and the time and place of their meeting; which law shall not be passed, unless agreed to by a majority of all the members elected to both branches of the general assembly; and which convention when met, shall have it in their power to revise, amend, or change the constitution. But, as the holding any part of the human creation in slavery, or involuntary servitude, can only originate in usurpation and tyranny, no alteration of this constitution shall ever take place so as to introduce slavery or involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted.

No amendment, shall ever permit, the introduction of slavery

Education,

Seminary lands not to be sold prior to the year 1820.

The general assembly shall pass laws, for the encouragement of the arts and sciences.

Regular system of education.

Monies paid by persons exempt from

ARTICLE IX.

SEC. 1. Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government, and spreading the opportunities and advantages of education through the various parts of the country being highly conducive to this end, it shall be the duty of the general assembly, to provide by law, for the improvement of such lands as are, or hereafter may be granted by the United States, to this state, for the use of schools, and to apply any funds which may be raised from such lands, or from any other quarter, to the accomplishment of the grand object for which they are or may be intended: But no lands granted for the use of schools or seminaries of learning, shall be sold by authority of this state, prior to the year eighteen hundred and twenty; and the monies which may be raised out of the sale of any such lands, or otherwise obtained for the purposes aforesaid, shall be and remain a fund for the exclusive purpose of promoting the interest of literature and the sciences, and for the support of seminaries and public schools. The general assembly shall, from time to time, pass such laws as shall be calculated to encourage intellectual, scientifical, and agricultural improvement, by allowing rewards and immunities for the promotion and improvement of arts, sciences, commerce, manufactures, and natural history; and to countenance and encourage the principles of humanity, industry, and morality.

SEC. 2. It shall be the duty of the general assembly, as soon as circumstances will permit, to provide by law, for a general system of education, ascending in a regular gradation from township schools to a state university, wherein tuition shall be gratis, and equally open to all.

SEC. 3. And for the promotion of such salutary end, the money which shall be paid as an equivalent by persons exempt from militia duty, except in times of war, shall be ex-

clusively, and in equal proportion, applied to the support military duty, &c. applied to county seminaries; also all fines assessed for any breach of the penal laws, shall be applied to said seminaries, in the counties wherein they shall be assessed.

SEC. 4. It shall be the duty of the general assembly, as soon as circumstances will permit, to form a penal code, founded on the principles of reformation, and not of vindictive justice: And also to provide one or more farms, to be an asylum for those persons who, by reason of age, infirmity, or other misfortunes, may have a claim upon the aid and beneficence of society, on such principles, that such persons may therein find employment, and every reasonable comfort, and lose, by their usefulness, the degrading sense of dependence.

SEC. 5. The general assembly, at the time they lay off a new county, shall cause at least ten per cent. to be reserved out of the proceeds of the sale of town lots, in the seat of justice of such county, for the use of a public library for such county, and, at the same session, they shall incorporate a library company, under such rules and regulations as will best secure its permanence, and extend its benefits.

Penal code on the principles of reformation.

Reservation of 10 per cent. &c. in new counties, for county libraries.

ARTICLE X.

SEC. 1. There shall not be established or incorporated, in this state, any bank or banking company, or monied institution, for the purpose of issuing bills of credit, or bills payable to order or bearer: *Provided*, That nothing herein contained shall be so construed as to prevent the general assembly from establishing a state bank, and branches, not exceeding one branch for any three counties, to be established at such place, within such counties, as the directors of the state bank may select; provided there be subscribed, and paid, in specie, on the part of individuals, a sum equal to thirty thousand dollars: *Provided also*, That the bank at Vincennes, and the Farmers' and Mechanics' bank of Indiana, at Madison, shall be considered as incorporated banks, according to the true tenor of the charters granted to said banks, by the legislature of the Indiana territory; *Provided*, That nothing herein contained shall be so construed as to prevent the general assembly from adopting either of the aforesaid banks as the state bank: And in case either of them shall be adopted as the state bank, the other may become a branch, under the rules and regulations herein before prescribed.

ARTICLE XI.

SEC. 1. Every person who shall be chosen or appointed to any office of trust or profit, under the authority of this state, shall, before entering on the duties of said office, take an oath or affirmation, before any person lawfully authoriz-

Oath of office.

Treason, how defined.

How proved.

Persons elected disqualifed, who shall have been convicted of bribery, &c.

Officers, their residence.

Neither slavery nor involuntary servitude.

Laws, when in force.

Commissions, how to issue.

Recorder.

Corydon the seat of government, &c.

Old counties not to be reduced below 400 square miles.

ed to administer oaths, to support the constitution of the United States, and the constitution of this state, and also an oath of office.

SEC. 2. Treason against this state shall consist only in levying war against it, in adhering to its enemies, or giving them aid and comfort.

SEC. 3. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 4. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God.

SEC. 5. Every person shall be disqualified from serving as governor, lieutenant-governor, senator, or representative, for the term for which he shall have been elected, who shall have been convicted of having given or offered any bribe, treat, or reward, to procure his election.

SEC. 6. All officers shall reside within the state; and all district, county, or town officers, within their respective districts, counties, or towns, (the trustees of the town of Clarksville excepted,) and shall keep their respective offices at such places therein as may be directed by law; and all militia officers shall reside within the bounds of the division, brigade, regiment, battalion, or company, to which they may severally belong.

SEC. 7. There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. Nor shall any indenture of any negro or mulatto hereafter made and executed out of the bounds of this state, be of any validity within the state.

SEC. 8. No act of the general Assembly shall be in force until it shall have been published in print, unless in cases of emergency.

SEC. 9. All commissions shall be in the name, and by the authority, of the state of Indiana, and sealed with the state seal, and signed by the governor, and attested by the secretary of state.

SEC. 10. There shall be elected in each county, a recorder, who shall hold his office during the term of seven years, if he shall so long behave well: *Provided*, That nothing herein contained shall prevent the clerks of the circuit courts from holding the office of recorder.

SEC. 11. Corydon, in Harrison county, shall be the seat of government of the state of Indiana until the year eighteen hundred and twenty-five, and until removed by law.

SEC. 12. The general assembly, when they lay off any new county, shall not reduce the old county, or counties, from which the same shall be taken, to a less content than four hundred square miles.

SEC. 13. No person shall hold more than one lucrative office at the same time, except as in this constitution expressly permitted.

No person shall hold more than one lucrative office.

SEC. 14. No person shall be appointed as a county officer, within any county, who shall not have been a citizen and an inhabitant therein, one year next preceding his appointment, if the county shall have been so long erected; but if the county, shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

SEC. 15. All town and township officers shall be appointed in such manner as shall be directed by law.

SEC. 16. The following officers of government shall not be allowed greater annual salaries, until the year eighteen hundred and nineteen, than as follows:—the governor, one thousand dollars; the secretary of state, four hundred dollars; the auditor of public accounts, four hundred dollars; the treasurer, four hundred dollars; the judges of the supreme court, eight hundred dollars each; the presidents of the circuit courts, eight hundred dollars each; and the members of the general assembly, not exceeding two dollars per day each, during their attendance on the same; and two dollars for every twenty-five miles they shall severally travel, on the most usual route in going to, and returning from the general assembly; after which time, their pay shall be regulated by law. But no law, passed to increase the pay of the members of the general assembly, shall take effect until after the close of the session at which such law shall have been passed.

SEC. 17. In order that the boundaries of the state of Indiana may more certainly be known and established, it is hereby ordained and declared, that the following shall be, and forever remain the boundaries of the said state, to wit: Bounded on the east, by the meridian line which forms the western boundary of the state of Ohio; on the south, by the Ohio river, from the mouth of the Great Miami river to the mouth of the river Wabash; on the west, by a line drawn along the middle of the Wabash river, from its mouth to a point, where a due north line drawn from the town of Vincennes would last touch the northwestern shore of the said Wabash river; and from thence, by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of lake Michigan; on the north, by the said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the state of Ohio.

ARTICLE XII.

SEC. 1. That no evils or inconvenience may arise from the change of a territorial government to a permanent state

Salaries.

Boundaries of the state.

County officers, their residence.

All suits, recognizances, &c. continue, as if no change had taken place.

Fines and forfeitures inure, &c.

All territorial officers continue until superseded.

Territorial laws not inconsistent &c. remain in force.

Governor use private seal, &c.

Executive officers, reside at seat of government.

Suits, &c. pending, to be carried on, as if this constitution had not been adopted.

President of the convention, to issue writs of election.

government, it is declared by this constitution, that all rights, suits, actions, prosecutions, recognizances, contracts, and claims, both as it respects individuals and bodies corporate, shall continue as if no change had taken place in this government.

SEC. 2. All fines, penalties, and forfeitures, due and owing to the territory of Indiana, or any county therein, shall inure to the use of the state or county. All bonds executed to the governor, or any other officer, in his official capacity in the territory, shall pass over to the governor, or other officers of the state or county, and their successors in office, for the use of the state or county, or by him or them to be respectively assigned over to the use of those concerned, as the case may be.

SEC. 3. The governor, secretary, and judges, and all other officers, both civil and military, under the territorial government, shall continue in the exercise of the duties of their respective departments, until the said officers are superseded under the authority of this constitution.

SEC. 4. All laws and parts of laws now in force in this territory, not inconsistent with this constitution, shall continue and remain in full force and effect until they expire, or be repealed.

SEC. 5. The governor shall use his private seal until a state seal be procured.

SEC. 6. The governor, secretary of state, auditor of public accounts, and treasurer, shall severally reside and keep all the public records, books, and papers, in any manner relating to their respective offices, at the seat of government: *Provided notwithstanding*, That nothing herein contained, shall be so construed as to affect the residence of the governor for the space of six months, and until buildings suitable for his accommodation, shall be procured at the expense of the state.

SEC. 7. All suits, pleas, plaints, and other proceedings now depending in any court of record, or justices courts, shall be prosecuted to final judgment and execution, and all appeals, writs of error, certiorari, injunction, or other proceedings whatever, shall progress, and be carried on, in the respective court or courts, in the same manner as is now provided by law, and all proceedings had therein, in as full and complete a manner as if this constitution were not adopted. And appeals and writs of error, may be taken from the circuit court, and general court, now established in the Indiana territory, to the supreme court in such manner as shall be provided for by law.

SEC. 8. The president of this convention shall issue writs of election, directed to the several sheriffs of the several counties, requiring them to cause an election to be held for governor, lieutenant governor, representative to

the congress of the United States, members of the general assembly, sheriffs, and coroners, at the respective election districts in each county, on the first Monday in August next: Which election shall be conducted in the manner prescribed by the existing election laws of the Indiana territory; and the said governor, lieutenant governor, members of the general assembly, sheriffs, and coroners, then duly elected, shall continue to exercise the duties of their respective offices for the time prescribed by this constitution, and until their successor or successors are qualified, and no longer.

SEC. 9. Until the first enumeration shall be made, as directed by this constitution, the county of Wayne shall be entitled to one senator, and three representatives; the county of Franklin, one senator, and three representatives; the county of Dearborn, one senator, and two representatives; the county of Switzerland, one representative: and the county of Jefferson and Switzerland, one senator; and the county of Jefferson, two representatives; the county of Clark, one senator, and three representatives; the county of Harrison, one senator, and three representatives; the counties of Washington, Orange, and Jackson, one senator: and the county of Washington, two representatives; the counties of Orange and Jackson, one representative each; the county of Knox, one senator, and three representatives; the county of Gibson, one senator, and two representatives; the counties of Posey, Warrick, and Perry, one senator; and each of the aforesaid counties of Posey, Warrick, and Perry, one representative.

SEC. 10. All books, records, documents, warrants and papers, appertaining and belonging to the office of the territorial treasurer of the Indiana territory, and all monies therein, and all papers and documents in the office of the secretary of said territory, shall be disposed of as the general assembly of this state may direct.

SEC. 11. All suits, actions, pleas, plaints, prosecutions, and causes whatsoever, and all records, books, papers, and documents, now in the general court, may be transferred to the supreme court established by this constitution: And all causes, suits, actions, pleas, plaints, and prosecutions whatsoever, now existing or pending in the circuit courts of this territory, or which may be therein at the change of government, and all records, books, papers and documents, relating to the said suits, or filed in the said courts, may be transferred over to the circuit courts established by this constitution, under such rules and regulations as the general assembly may direct.

First apportionment.

Territorial records, &c. to be disposed of according to law.

Suits, records, &c. in territorial courts, transferred to the state courts.

Done in convention at Corydon, on the twenty-ninth day of June, in the year of our Lord eighteen hundred and sixteen, and of the Independence of the United States, the fortieth.

In witness whereof we have hereunto subscribed our names.

JONATHAN JENNINGS,
President of the Convention, and Delegate
from the county of Clark,

Delegates in Convention from the county of

CLARK.

Thomas Carr,
John K. Graham,
James Lemon,
James Scott.

DEARBORN.

James Dill,
Ezra Ferris,
Solomon Manwaring,

FRANKLIN.

James Brownlee,
William H. Eads,
Robert Hanna,
Enoch McCarty,
James Noble.

GIBSON.

Alexander Devin,
Fred'k Rapp,
David Robb,
James Smith.

HARRISON.

John Boone,
Davis Floyd,
Daniel C. Lane,
Dennis Pennington,
Patrick Shields.

Attest, WILLIAM HENDRICKS, Secretary.

JEFFERSON.

Nath'l Hunt,
David H. Maxwell,
Samuel Smock.

KNOX.

John Badollet,
John Benefiel,
Jno. Johnson,
Wm. Polke,
B. Parke.

PERRY.

Charles Polke.

POSEY.

Dann Lynn.

SWITZERLAND.

William Cotton.
WASHINGTON.
John De Pauw,
William Graham,
William Lowe,
Samuel Milroy,
Robert M'Intire.

WAYNE.

Patrick Baird,
Jeremiah Cox,
Hugh Cull,
Joseph Holman.

THE

REVISED LAWS

OF

INDIANA.

CHAPTER I.

An Act authorizing the Action of Disseisin.

[APPROVED, JANUARY 26, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That in all cases, where a person holds possession of lands, tenements, or hereditaments, to the exclusion of the rightful owner, whether such possession be acquired, either by unlawful entry thereon, or by unlawful detainer after lawful entry, the owner of such lands, tenements, and hereditaments shall have his action of disseisin against the wrongful possessor, and shall, in such action, recover the possession thereof, together with damages for the unlawful detention of such possession.

SEC. 2. That it shall be sufficient for the plaintiff, in such action, to state, in his declaration, the nature of the estate he claims, whether in fee simple, or any lesser estate, and to describe the lands, tenements, or hereditaments, with precision and certainty, so as to be distinguished from other lands, tenements, or hereditaments, that he was seized or possessed of the premises on a day certain, and that afterwards, on the same day, the defendant entered thereon, disseised the plaintiff thereof, and put him out therefrom, and that he has ever since continued to deforce the plaintiff thereof and hold him out therefrom, and that the defendant has taken the profits thereof to himself, and thereupon demand seizin or possession of the land and damages for its detention.

SEC. 3. That it shall be sufficient for the defendant to allege, that he is not guilty, as charged in the plaintiff's declaration and upon issue joined to such plea, it shall be sufficient for the plaintiff to shew, that the defendant is in pos-

When this ac-
tion will lie.

Pl'tf how to
declare.

Def't plead
general issue.

Aliens.

session of the premises, and that he has the right to the possession thereof by the law of the land.

Extent of remedy herein provided.

SEC. 4. That the remedy hereby provided, shall embrace all the various remedies known to the common law, for enforcing the delivery of possession or seizin of lands, tenements, and hereditaments, to the rightful owner of any title thereto, either possessory or otherwise, and may be used in lieu thereof: and final judgment in an action of disseisin shall be conclusive upon the parties thereto, and shall be a bar to another suit for the same cause upon titles held by them at the time of such judgment.

Who may join as pl'tfs and def'ts.

SEC. 5. That landlords and tenants, or persons standing in the relation of landlord and tenant to each other, may join in prosecuting and defending actions of disseisin; and any person, standing in the relation of landlord to any person, against whom an action of disseisin may be brought, shall be admitted to defend said action, upon shewing to the court, that such relation exists.

Process.

When issued.

Action where brought.

Limitation.

Saving,

No nonsuit, &c.

SEC. 6. That the process, in actions of disseisin, shall be a summons to the defendant, to be issued after filing the declaration, and directed to the sheriff, to be served in like manner, as other summonses are directed by law: and in all cases, the action of disseisin shall be brought in the circuit court of the county, where the premises, in dispute, are situate; but where part of such premises may be situate in one county, and part in another, the circuit court of either county shall have jurisdiction, at the election of the plaintiff.

SEC. 7. That no action of disseisin shall be sustained by any person, who shall not have had right of entry within twenty years next before the commencement of such action, unless such person shall have been, during such time or part thereof, absent from the United States, infant, feme covert or insane; and the time of such absence, infancy, coverture, or insanity, shall not be reckoned any part the limitation aforesaid, provided such limitation commenced during such inability.

SEC. 8. That no nonsuit shall be suffered, in any action of disseisin, by reason that there may be too many plaintiffs, if there be one plaintiff entitled to recover thereon.

CHAPTER II.

An Act authorizing Aliens and Foreigners to hold Real Estate within the state of Indiana.

[APPROVED, JANUARY 14, 1818.]

Be it enacted by the General Assembly of the state of Indiana,
That it shall and may be lawful for any foreigner or foreign-

*Apprentices.**Apprentices.*

ers, alien or aliens, who are not the subject or subjects of, or in any wise owing allegiance to any prince, potentate or power, or foreign state, which is or shall be at the time of making the purchase herein permitted and allowed, at war with the United States of America, to purchase lands, tenements, and hereditaments within this state, and to have and hold the same, to them, their heirs, assigns, and legal representatives forever, as fully and to all intents and purposes as any natural born citizen may or could do: *Provided*, That such alien or aliens shall, previous to making such purchase, manifest by his, her, or their declaration, made according to the laws of the United States, his, her, or their bona fide intention of becoming a citizen of the United States: *And provided also*, That nothing herein contained, shall be so construed or taken as to contravene any law of the United States, that is now or may be hereafter in force relative to aliens and foreigners.

Aliens may purchase real estate.

Declaration of intention to become a citizen.

CHAPTER III.

An Act respecting Apprentices.

[APPROVED, JANUARY 7, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That any person within the age of twenty-one years, who now is or shall hereafter be bound by an indenture of his or her own free will and accord, or by and with the consent of his or her father, or in case of the death of his or her father, with the consent of his or her mother or guardian to be expressed on such indenture, and signified by his or her parent or guardian by signing and sealing the said indenture, and not otherwise, to serve as apprentices in any art, craft, mystery, service, trade, employment, manual occupation, or labour, until he or she arrives, males, to the age of twenty-one years, and females, to the age of eighteen years, as the case may be, or for any shorter time, shall serve accordingly.

Apprentices bound, &c.

SEC. 2. If any master or mistress shall be guilty of any misusage, refusal of necessary provision or clothes, unreasonable correction or other ill treatment, so that his or her apprentice shall have any just reason to complain, then the said apprentice, or some other person for him or her, shall repair to some justice of the peace not akin to either party, within the county where such master or mistress resides, and make complaint thereof, and the said justice of the peace shall upon such complaint of ill treatment on the part of the master or mistress to his or her said apprentice, or ill

Mode of redress, when apprentice is aggrieved.

treatment to the said apprentice from any other person by order of the said master or mistress, recognize the parties in such securities as he may think proper, to appear at the next term of the circuit court to be holden in the county where the parties reside; at which term the court shall hear in a summary way, and determine whether the said apprentice shall be discharged or return to the service of his or her said master or mistress; and in case he or she be discharged, the clerk of the said court shall give him or her a certificate thereof, and the decision of the said court shall in all cases be final and conclusive between the parties.

Apprentice incapable of making contracts.

SEC. 3. Any and every contract or voluntary enlistment hereafter entered into by any apprentice, during the time of his apprenticeship, shall be, and the same is hereby declared absolutely null and void.

SEC. 4. It shall and may be lawful, in case the apprentice deserts or absents himself or herself from the service of his or her master or mistress, or hides or secretes himself or herself, for such master or mistress to advertise in some newspaper, offering and giving a reasonable reward for the apprehending and bringing back the said apprentice; and in those cases, where he or she absents himself or herself, and openly runs at large, the master or mistress may cause and have a warrant issued against him or her, by any justice of the peace of the county, directed to the constable or other civil officer, to bring the body of the said apprentice forthwith before him, upon the production whereof, to order him or her to return into the said service of his or her said master or mistress; but should he or she refuse to return therein, then to commit him or her to the common jail of the county, there to remain until he or she shall so consent: *Provided however,* That the said apprentice may appeal to the next circuit court, by entering into recognizance with sufficient surety to appear at and abide the decision of the said court, who shall hear and decide as is provided in a foregoing section of this act.

How the master may reclaim absconding apprentice.

SEC. 5. Any and all time wilfully lost by an apprentice, shall be by him or her returned day for day to his or her master or mistress, at and upon the expiration of his or her indentures, and all reasonable costs and charges to, which any master or mistress may be put by his or her apprentice in apprehending or regaining him or her, shall be repaid him or her by the said apprentice, at and upon the expiration of his or her apprenticeship.

Apprentice to remunerate the master for time lost, &c.

SEC. 6. All laws and parts of laws heretofore in force concerning apprentices, be, and the same are hereby repealed.

Former laws repealed.

This act to take effect from and after its publication.

CHAPTER IV.

An Act authorizing and regulating Arbitrations.

[APPROVED, JANUARY 29, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That all persons who shall or may have any controversy or controversies, for which there is no other remedy but by personal action, or by suit in equity, and who are desirous of settling or terminating the same, may agree to submit the said controversy or controversies, to the umpirage or arbitration of any person or persons to be by them mutually chosen for that purpose, and that their submission may be made a rule of any court of record within this state.

What cases may be arbitrated.

SEC. 2. When any person or persons have agreed to submit any matter or matters, in controversy between them, to umpirage or arbitration as aforesaid, and that the said submission may be made a rule of court, they shall enter into arbitration bonds, under their hands and seals, duly executed and delivered, with conditions for the faithful performance of the award or umpirage; which condition shall set forth the name or names of the umpire or arbitrators, and the matter or matters submitted to his or their determination, and shall also expressly state their agreement that the submission may be made a rule of any court of record within this state, or may be made a rule of such particular court as they may name or point out in their submission; and when the umpire or arbitrators is or are appointed, and the arbitration bonds duly executed and delivered as aforesaid, either party may appoint a time and place for the umpire or arbitrators to attend or meet, of which he shall give written notice to the opposite party, and to the umpire or arbitrators, at least ten days before the time appointed for such meeting; and when the umpire or arbitrators shall be ready to proceed to the business to which he or they shall have been appointed, the parties may proceed to exhibit their proofs, and the umpire or arbitrators shall have power to adjourn from time to time, until he is prepared to make his umpirage, or they are prepared to make their award, provided the same be made up within the time stipulated in the submission.

Parties to enter into bond.

Time & place of meeting.

SEC. 3. The parties shall have the benefit of legal process to compel the attendance of witnesses, which process shall be issued by the clerk of the circuit court of that county, and shall be returnable before the umpire or arbitrators on a day certain, and any person or persons disobeying such process, shall be deemed guilty of contempt of the court out of which the same issued, and shall be subject to the same penalties and forfeitures, as are provided for disobeying writs of subpoena in other cases, and the costs of such

C'pk to issue subpoenas.

Costs of witnesses, by whom taxed.

witnesses shall be taxed by the umpire or arbitrators, according to the provisions contained in the law, ascertaining the fees of witnesses; which costs, together with the sum hereinafter allowed to the umpire or arbitrators, shall be made a part of the rule of court, and all witnesses examined by the umpire or arbitrators, shall be under oath, unless otherwise agreed to by the parties.

Award to be in writing, & copies delivered to the parties.

SEC. 4. The award or final determination of the umpire or arbitrators, made agreeably to this act, shall be drawn up in writing and shall be signed by him or them, or so many of them as may agree thereunto, and a true copy of the said award or umpirage shall, within fifteen days thereafter, be delivered by the umpire or arbitrators, to each of the parties, or left at his, her, or their usual place of abode; and if either of the parties shall refuse or neglect to obey the said award or umpirage, the other party may return the same, together with the submission, or arbitration bond to the court named in the submission, or if no court be named in the submission, then to the circuit court of the county in which the parties reside; the submission or award, so returned, shall be entered on record and filed by the clerk, and a rule thereupon made, that the person or persons against whom such award or umpirage is to operate, shew cause at that or the next succeeding court, why the said award or umpirage should not be made the judgment of the said court; and if the party should fail to appear, having had ten days previous notice, or appearing, should not shew in the opinion of the court, sufficient cause, the court shall then proceed to enter judgment thereupon; which judgment shall have the same force and effect, and operation as judgment in other cases: *Provided always,* That before any rule of court is made thereon, the party moving for such rule, shall produce to the court satisfactory proof of the due execution of the submission or arbitration bond, also that the party refusing or neglecting to obey the award or umpirage, hath been furnished with a true copy thereof as aforesaid; and provided further, that the party shewing cause why the award or umpirage should not be made the judgment of the court, shall be at liberty to produce before the court any evidence that he can, to shew that the said award or umpirage was obtained by mistake, in matter of law or fact, or that the same was obtained by corrupt or other undue means, and in either case, the said award or umpirage shall be annulled and set aside at the costs of the party presenting the same.

How confirmed, & how set aside.

SEC. 5. In all cases where an award or umpirage shall be presented to any court of record within this state, for a judgment to be entered thereon, whether the reference shall have been made by rule of court or otherwise, it shall be the duty of the court to which the same shall be pre-

Award where filed.

presented as aforesaid, to hear any evidence of either party, whether to invalidate or support the same, and to set aside or enter judgment on the said award or umpirage, as to said court may seem just.

SEC. 6. The umpire or arbitrators shall be entitled to receive each, the sum of one dollar per day for each and every day necessarily employed in performing the duties of arbitrators. Allowance to

SEC. 7. In all cases when the plaintiff and defendant having accounts to produce one against another, shall by themselves, attorneys, or agents, consent to a rule of court, referring the adjustment thereof to certain persons mutually chosen by them in open court, the award or report of such referees being made according to the submission of the parties, and approved of by the court, and entered upon the record or roll, shall have the same effect and be deemed and taken to be as available in law, as a verdict given by twelve men; and the party to whom any sum or sums of money are thereby awarded to be paid, shall have judgment on *scire facias* for the recovery thereof, as the case may require.

SEC. 8. All laws and parts of laws now in force in this state, relative to arbitrations, shall be and the same are hereby repealed.

This act to take effect and be in force from and after its publication.

An award on mutual accounts to have the same validity as a verdict.

CHAPTER V.

An Act authorizing Domestic Attachments, and to regulate the proceedings thereon.

[APPROVED, JANUARY 2, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That whenever any person shall so abscond or conceal himself, herself, or themselves, so that the usual process of law cannot be served upon him, her, or them, it shall and may be lawful for any creditor or creditors, his, her, or their agent or attorney, of such person or persons who shall so abscond or conceal himself or themselves, to appear before any clerk of the circuit court or justice of the peace, and make oath to the facts or circumstances in the following form, to wit: A. B. of the county aforesaid, solemnly swears or affirms, (as the case may be,) that C. D. late of said county, is justly indebted to him the said A. B. in the sum of *here state the nature of the debt or contract* and that the said C. D. so conceals himself, her-

self, or themselves, (as the case may be,) so that the ordinary process of law cannot be served upon him, her, or them, (as the case may be:) whereupon, it shall be lawful for such person, before whom such affidavit, oath, or affirmation shall have been taken, to issue his writ of domestic attachment, under his hand and seal of office, subject to such regulations and mode of proceeding, as is hereinafter prescribed.

SEC. 2. Whenever such oath or affirmation shall have been taken before any clerk of the circuit court, he shall proceed to issue a writ of attachment against the goods and chattels, lands and tenements of the defendant named in such affidavit, directed to the sheriff of the county, commanding him to make service and return of the same, within twenty days: on the return of which writ, the clerk shall docket the same for trial, at the next term ensuing the service thereof: and the clerk, issuing such writ, shall, on the service and return of the same, notify the defendant or defendants named therein, of the pendency of the same, by publishing the notice, four weeks successively, in some newspaper in the county, in which the writ issues, or by affixing such notice, at three of the most public places, in such county, one of which shall be at the place, where courts are holden, in and for such county.

SEC. 3. Whenever the time specified in this act, for notifying the defendant or defendants, named in such writ, to appear and plead thereto, shall have transpired, according to the intent and meaning of the second section of this act, it shall be the duty of the clerk, to note the same on the docket of the court, which note or entry shall continue such cause to the term next ensuing the time specified in this act, for notifying such absent or absconding defendant or defendants.

SEC. 4. When due notice shall have been given of the pendency of this writ, it shall and may be lawful for the plaintiff or his attorney to proceed to take judgment thereon, and execution shall issue thereon, as in other cases.

SEC. 5. Each and every justice of the peace is hereby authorized and required to issue a writ of attachment, on the oath or affirmation of the creditor of such absconding debtor, his agent or attorney, as is herein set forth, and such attachment shall issue under the hand and seal of the justice issuing the same, directed to any constable of the proper county, requiring him to execute the same, by levying on the goods and chattels, rights and credits, monies and effects, that may be found within his jurisdiction, and make return thereof within twenty days.

SEC. 6. The constable executing such writ of attachment, shall take, to his assistance, one or more credible person or persons, who shall be freeholders, and on the

Writ issued by
clerk, to be di-
rected to the
sheriff.

Service and
return.

Clerk shall
docket, &c.

Def't how no-
tified.

Continuance.

Judgment and
execution.

Writ issued by
J. P. to be di-
rected to con-
stable.

Service & re-
turn.

Writ how ex-
ecuted by con-
stable.

discovery of property, shall declare, in the presence of such person or persons, that by virtue of the writ of attachment to him directed, he attaches the goods and chattels, rights, credits, monies and effects of the defendant or defendants named in such writ, at the suit of the plaintiff or plaintiffs named in such writ; and the constable or officer, serving such writ, shall, with the assistance of such person or persons, proceed to take an inventory of the property so attached, which shall be signed by such officer and the person or persons assisting him, and returned with such writ to the person issuing the same, together with the time and manner of service; and such writ, when served according to the provisions of this act, shall bind the property from the time of service.

SEC. 7. Such writ being returned executed, the justice issuing the same shall proceed to advertise the service of such writ and pendency of the suit thereon, in the place or places prescribed in the second section of this act, at least twenty days before rendering judgment thereon.

SEC. 8. The constables and sheriffs shall be accountable for the property attached by them respectively, or the appraised value thereof, except such property as shall be lost or destroyed by unavoidable accident.

SEC. 9. In all cases, where any person or persons, other than the defendant, may claim any real or personal property attached under the provisions of this act, or the act relative to foreign attachments, the officer attaching the same, shall, previous to any further proceeding on such writ, empanel a jury of six freeholders of the county; and the said jury after being duly sworn, by the said officer, who is hereby authorized to administer such oath, shall proceed to try the right of such claimant on the ground, where such attachment shall have been served; and the officer shall give the claimant reasonable time to procure testimony to substantiate his said claim: and if the right of property shall be found in such claimant, the officer shall forthwith release from his custody or keeping, such property, and the plaintiff in such suit shall pay the costs accruing on the trial of plaintiff shall pay costs.

When the
plaintiff shall
pay costs.

When the
claimant.

Appeal.

subject however,

when such appeal shall be taken from a justice,

to the law regulating appeals from proceedings of justices of the peace;

and in all cases where an appeal shall be taken from the verdict of such jury, the person or persons claiming such property and in whose possession it may be,

Claimant
may hold pro-
perty, till ap-
peal be deter-
mined, giving
bond, &c.

shall be at liberty, upon giving bond and sufficient security in a reasonable sum, to be approved of by the officer serving such attachment, to hold such property until such appeal shall be determined; and on failure to deliver such property agreeably to the true intent and meaning of such bond, the said bond may be put in suit by the plaintiff in such attachment, who shall recover thereon all damages by him sustained.

SEC. 10. Whenever any creditor or his agent or attorney, in his or her behalf, shall make oath, before the clerk or justice issuing such writ of attachment, that he has good reason to believe, that any person (*naming such person,*) has property of any description, in his, her, or their possession, belonging to the defendant in attachment, and if the officer serving such writ of attachment, cannot come at the property of the defendant in the possession of such person, such officer is hereby authorized, and it is hereby made his duty to summon such person as garnishee, by leaving with him, her, or them, at his, her, or their usual place of residence, a copy of such writ of attachment, also a copy of the affidavit, together with a written notice to appear (if before a justice of the peace) within five days before such justice, or if before the circuit court, at the term of the court next ensuing the service of such writ of attachment, there to answer, under oath or affirmation, all questions, that shall be put to him, her or them, touching the rights, property and credits of the defendant or defendants in his, her, or their hands, or within his, her, or their knowledge; and from the day of such service, such garnishee shall stand and be accountable to the plaintiff or plaintiffs in attachment, for the amount of the money, property, and credits, in his, her, or their hands, or due and owing from him, her or them to the defendant or defendants in attachment.

SEC. 11. The suit instituted against such garnishee shall be continued without any further proceedings therein, until the action against the defendant in attachment be determined: and if, on trial of such action, nothing shall be found due from the defendant to the plaintiff, then the garnishee shall recover costs from the plaintiff, although such garnishee may be indebted to the defendant in attachment, or have money or effects of such defendant in his, her or their possession; and if in such suit so instituted against the garnishee, the plaintiff shall be nonsuited, the cause discontinued or judgment be had against him, her, or them, the garnishee shall recover his costs: and if such plaintiff shall recover judgment against the defendant in attachment, and the garnishee shall deliver up to the sheriff or constable (as the case may be) before judgment had against him or her, or shall produce an inventory of all the goods and chattels and other effects in his or her possession, and shall also pay to

Garnishee,
when & how
summoned.

Suit vs. garni-
shee continu-
ed, &c.

When plain-
tiff shall pay
costs.

When defend-
ant.

such officer all monies due from him or her to the said defendant, then the costs, which shall have accrued on such suit against the garnishee, shall be paid out of the proceeds of the property attached and belonging to the defendant: but if he shall not appear, or if appearing, shall refuse truly to confess the matter alleged, and the plaintiff, on trial, shall recover judgment, such garnishee shall pay the costs: *Provided however,* That no garnishee in any case shall be compelled to pay monies, or perform any contract to or for any plaintiff in attachment, in any other way or manner or at any other time, than he would be lawfully bound to do, to or for the defendant in attachment.

SEC. 12. If the plaintiff or plaintiffs, his, her, or their agent or attorney will make oath or affirmation, before the clerk or justice issuing this writ, that he, she, or they is or are afraid that said garnishee will abscond before judgment can be had, and that he, she, or they verily believe such garnishee hath monies, goods, chattels, or effects in his or her possession, belonging to, or is indebted to the said defendant, it shall be lawful for the clerk to issue a warrant against such garnishee, and hold him to bail thereon, as in other civil cases; and if the proceedings are had on this writ before a justice of the peace, such justice shall issue his warrant against such garnishee and hold him to bail thereon, as in other civil cases.

SEC. 13. Upon the trial of this writ of attachment in the circuit court in the one case, or before a justice of the peace in the other, if the plaintiff or plaintiffs, or any other creditor or creditors, shall make sufficient proof of the debts due him, her, or them from such defendant, and also of the goods chattels, lands and tenements, rights and credits, monies and effects, in the hands and possession of the garnishee, such court or justice of the peace (as the case may be) shall proceed to give judgment thereon, in favor of the plaintiff or plaintiffs, creditor or creditors, either against the garnishee or the effects of the defendant, as the case may require; but execution shall not be levied of the property of such defendant in the hands of such garnishee, in violation of the original contract, duty, or obligation due from such garnishee to the defendant in attachment.

SEC. 14. Whenever the plaintiff in this writ shall fail in proving his or her demand against the defendant, or in proving the property or effects claimed, or stated to be in the hands of the garnishee, he or she shall pay the costs, and judgment shall be entered up therefor, and execution shall issue for the same.

SEC. 15. If the sum proved by any one plaintiff or creditor shall be greater than is cognizable by a justice of the peace, such justice shall forthwith certify his proceedings to the next circuit court, to be helden in the county, together when justice shall certify his proceedings to circuit court.

Garnishee
may be held
to bail.

Judgment
how rendered
for plaintiff.

Plaintiff fail-
ing, &c. shall
pay costs.

er with the writ and constable's return, and said court shall proceed therein, as if the writ of attachment had issued from said court.

Courts to adjust creditor's demands.

Appoint commissioners.

Apportionment among creditors.

When plaintiff shall not discontinue.

Appeal.

Stay of execution as in other cases.

Lien in favour of consignee.

Wrts of attachment issued by court, supersede those issued by justices.

SEC. 16. Whenever this writ shall be returned before the circuit court, it shall be the duty of such court to examine into and adjust all accounts and demands of the plaintiff, or any creditor or creditors of the defendant in attachment, upon due proof being made to such court; and if it appears that there is sufficient property for the payment of the defendant's debts and costs, it shall be lawful for such court to appoint a commissioner to pay over, under the direction of the court, to the respective creditors of such defendant: and in case there shall not be found sufficient property to satisfy such claims, as shall be allowed by the court, then the costs shall be first paid, and the remaining sum or sums divided among such creditor or claimants, in proportion to their respective claims; and the same power, that is here given to the circuit courts, shall be extended to justices of the peace; and in all cases arising under this act, reasonable compensation shall be allowed to the officer, jury, and appraisers, to be adjudged by the court, before whom such proceedings shall be had.

SEC. 17. The plaintiff in any writ of attachment, shall in nowise, be permitted to discontinue the same, after any other creditor has applied and filed his or her claim before the court, or authority issuing such writ of attachment, without the consent, or satisfaction being made to such creditor.

SEC. 18. In all cases where monies and effects cannot be found to satisfy the legal costs of such attachment, then such costs shall be paid to [by] the plaintiff and creditors, in proportion to their several demands adjusted as aforesaid.

SEC. 19. All judgments rendered under this act, by any justice of the peace, may be taken up by appeal to the circuit court, as in other cases.

SEC. 20. Stay of execution on judgments under this act, shall be subject to the same law as is provided for in other cases, and the property attached, shall be released to such defendant, as in other cases.

SEC. 21. When goods shall be attached in the hands of a consignee, such consignee shall have a lien on such goods for any debt due to him or her, from the consignor, in preference to the plaintiff or any other creditor.

SEC. 22. All writs of attachment issued by the circuit court, against any absconding debtor or debtors, shall be a supersedeas to attachments issued by a justice of the peace undetermined at the time of serving said writ; and it shall and may be lawful for the sheriff or his deputy, or other officer to take into his possession, the property attached by the constable, as fully and to all intents and purposes, as if

the attachment issued by the justice had not been served; but such creditors as are claimants before the justice shall not be postponed by such supersedeas, but shall be entitled to their several debts, with the costs that shall have accrued before such justice, as well as in the circuit court, in proportion to the creditors claiming by virtue of such supersedeas; but no constable shall be accountable for any goods by him attached, after the same shall have been taken by the sheriff; and on the return of an attachment endorsed no goods or effects whereon to levy, or if it shall appear that there is not sufficient to satisfy such plaintiff or creditor's claim or demand, the justice issuing such writ of attachment shall on application of the plaintiff or creditor, issue an attachment against the lands and tenements of the defendant or defendants; and the constable shall levy the said writ of attachment, in the same manner that sheriffs are directed to do; and on the return of such writ, the justice shall forthwith certify his proceedings, together with the constable's return, to the next circuit court to be holden in and for said county, and said court shall proceed in the same manner as if the writ of attachment had originally issued therefrom.

SEC. 23. In all cases arising under this act, where the defendant shall appear and enter special bail, as in other cases on the day of trial, he shall have the same privilege in making his defence, as if such suit had been commenced by summons or capias; and when the sum in controversy shall exceed twenty dollars, such trial may be by jury, as in other cases.

SEC. 24. No writ of domestic attachment shall be issued by any clerk of the circuit court or justice of the peace, under this act, until the party applying for the same, shall have filed his bond, with security, in the office of the clerk of the court, or the justice issuing such writ, payable to the defendant, in double the amount of the original demand; and the sufficiency of such bond and security shall be determined by the clerk or justice issuing such writ.

SEC. 25. No writ of attachment shall issue against any person or persons by virtue of this act, when the family of such person shall be and remain bona fide settled within such county, if such absconding debtor or debtors shall not continue absent more than one year, after the time that he, she, or they may have abandoned his, her, or their family as aforesaid; unless an attempt be made to conceal such person's absence from his, her, or their creditors, or unless such person shall be secretly removing to evade the demand or debt of his, her, or their creditor or creditors.

SEC. 26. If any person is about to abscond, to the injury of his creditor, on the sabbath day, on oath being made thereof by such creditor, it shall be lawful for the clerk of the circuit court, or any justice of the peace of the proper

Plaintiffs before justices not to be prejudiced,

When justice may issue a-against lands, &c.

Defendant may enter spe-cial bail and make defence

Plaintiff to give bond.

Proviso, debt-or's family re-main bona fide settled in the county &c.

Writ may be issued on sab-bath day.

Attachment Foreign.

county, to issue a writ of attachment directed to the proper officer, who shall proceed on said sabbath day, to attach the goods and chattels of the defendant, as in other cases provided for by this act.

SEC. 27. Each and every person or persons, who may think himself, herself, or themselves aggrieved by process against him, her, or them had under the authority of this act, shall be entitled to an action on the bond filed as aforesaid; and if on trial, it shall appear to the satisfaction of a jury, that such proceedings, had against the defendant or defendants in attachment, were tortious and oppressive, then the person aggrieved shall recover damages.

SEC. 28. In all cases where a writ of attachment may be pending in a circuit court, and the defendant may be desirous, in the vacation thereof, to have his property released, it shall and may be lawful for the sheriff or other officer who may have the possession of such property attached, to release the same, by the said defendant entering into a recognizance of special bail, with such bail and security as shall be approved of by the clerk of the court where the same may be pending; and the clerk of such court is hereby authorized to take such recognizance of special bail, and is hereby declared and made responsible for the solvency of said special bail.

Action on plaintiff's bond.

Sheriff shall release property on plaintiff's giving special bail, &c.

Nonresident's property liable to attachment.

Jurisdiction of the court.

Property of joint debtors.

CHAPTER VI.

An Act relative to Foreign Attachments.

[APPROVED, JANUARY 30, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the lands, tenements, hereditaments, goods, chattels, rights, and credits, monies, and effects of any and all persons, not residents in this state, are and shall be liable for the payment of debts or other demands by suit, to be commenced by process of foreign attachment, to be issued from the circuit court having jurisdiction of the subject matter: and in case where the estate, property, or interest to be attached, exists or is situate in divers counties, the jurisdiction of the circuit court shall extend to such counties, and sundry writs may be issued and executed in such counties, and the joint and several estates, property, and interests of joint debtors, either as partners or otherwise, shall be liable as aforesaid, by suit against all or any of them, by their proper names, or the names by which they shall be known and reputed, or by the partnership name or style; and the estates, property, and interests, which may have de-

Attachment Foreign.

scended to nonresident heirs or devisees, or become vested in the nonresident executor or administrator of decedents, shall be liable in like manner as aforesaid, for the debts or other demands against such decedents' estates.

SEC. 2. That before any writ of attachment shall issue by virtue of this act, the debt or demand certain shall be proved by oath or affirmation to be justly due and owing, and that the defendant, whether the original debtor, or whether sued in a representative capacity only, is not, as the person making the oath or affirmation verily believes, at the time, a resident of this state, and bond shall be given, as in cases of domestic attachments, with surety to be approved of by the clerk of the court, and said oath or affirmation and bond shall be filed in the office of such clerk.

SEC. 3. That publication shall be made of the pendency of such attachment, for three weeks successively, in a newspaper printed and published in the county, in which such suit is depending, or the most convenient thereto, if no newspaper be there published, and there shall be continuances of said proceedings for two terms of the court in which they are instituted, after publication be made as aforesaid, before the court shall adjudicate therein; and their proceedings in such adjudication to final judgment, shall then be similar to the proceedings by domestic attachment, except where otherwise herein directed.

SEC. 4. That the court may direct the sale of chattels of a perishable nature, which may be seized under this act, to be made by the sheriff at public auction upon reasonable notice thereof; and the money arising from such sale, shall be deposited with the clerk of said court, subject to the order thereof, on final judgment to be rendered.

SEC. 5. No creditor, who may have prosecuted a claim under any attachment, and had judgment therefor in his favour, shall receive the value or amount of such judgment, or any share thereof, until he first give bond, with security to be approved of by the court, or clerk thereof, in double the value, to be received, payable to the defendant, conditioned, that the creditor, receiving the same, shall appear and answer to any suit, which such defendant may bring against him, within twelve months, thence next ensuing, and to pay to such defendant all sums of money, which, on trial to be had thereon, shall appear to have been received by such creditor, and which was not justly due and owing to such creditor, together with all interest and costs of suit.

SEC. 6. That it shall be lawful for any plaintiff in foreign attachment, to summon as garnishee any person, who may have any goods and chattels, monies, rights, credits, or effects in his hands belonging to such absent defendant, or to the estate, on account of which he is sued; or to summon any person, who may be indebted, in any manner whatso-

Creditor to make oath, & give bond.

Publication.

Continuance for two terms.

Chattels of a perishable nature, may be sold.

Judgment creditor shall give bond, &c. before payment.

Garnishees may be summoned, &c.

ever to such absent defendant, or to the estate on account of which he is sued, in the same manner and subject to the same rules and restrictions, as are pointed out and prescribed in an act "Authorizing domestic attachments," and the parties litigant, in such cases, as well as the court, shall be governed in all respects in their proceedings by the provisions of the last mentioned act, regulating remedies against garnishees.

CHAPTER VII.

An Act establishing the office of Attorney General, and providing for the appointment of such officer.

[APPROVED, DECEMBER 31, 1821.]

Preamble.

WHEREAS much inconvenience has and may hereafter result to this state, for the want of some officer to prosecute causes removed by writ of error from the circuit courts to the supreme court, for remedy whereof:

Attorney general to be chosen.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That an attorney general for this state, shall be chosen and elected by a joint ballot of both houses of the general assembly, at their present session, who shall continue in office for and during the time of three years: and whose special duty it shall be, to advise the executive, secretary of state, auditor of public accounts, and treasurer of state, upon such point or points of law as they or either of them may submit to him, touching the duties of their respective offices. He shall attend to and prosecute all cases civil or criminal, which shall come before the supreme court by writ of error or appeal from any of the inferior courts, wherein the state is a party, for and on behalf of the state; and shall, moreover, do and perform all such other duties as now are or hereafter may be enjoined on him by law.

His term of service.

SEC. 2. *Be it further enacted,* That the said attorney general when so chosen and elected, shall be commissioned by the governor, under the seal of state, and sworn into office by any one of the judges of the supreme court, and certified on the back of such commission.

How commissioned.

SEC. 3. The said attorney general, when so qualified, shall have and receive from the defendants in civil and parties convicted in criminal cases, such fees and perquisites as now are or hereafter may be allowed and fixed by law in the supreme court; and, moreover, shall have and receive the sum of two hundred dollars annually, to be paid at the treasury quarterly; and the auditor of public accounts, is hereby authorized to audit, and the treasurer to pay the

Attorneys.

same out of any monies in the treasury not otherwise appropriated.

SEC. 4. Should any vacancy happen in the office of attorney general, either by death, resignation, or removal from office, the supreme court shall have power to appoint some suitable and qualified person to fill the same, until the next meeting of the general assembly, and until some one shall be chosen and elected according to the foregoing provisions of this act.

SEC. 5. The attorney general shall reside and keep his office at the seat of government.

This act shall take effect from and after its passage.

Vacancy how filled.

To reside at the seat of government.

CHAPTER VIII.

An Act regulating the admission and practice of Attorneys and Counselors at Law.

[APPROVED, JANUARY 31, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That no person shall be permitted to practice as an attorney and counsellor at law, or to commence, conduct, or defend any action, suit, or plaint, in which he is not a party concerned, in any court of record within this state, either by using or subscribing his own name, or the name of any other person, without having previously obtained a license for that purpose, from any two of the judges of the supreme court, or from two circuit judges, agreeably to the laws of this state; which license shall constitute the person receiving the same an attorney and counsellor at law, and shall authorize him to appear in all superior and inferior courts of record in this state, if the license be given by the said judges of the supreme court, and in all the circuit and inferior courts of record in this state, if the license be given by the circuit judges of this state; and to appear and practice as an attorney and counsellor at law, according to the laws and customs thereof, for and during his good behaviour in the said practice, and to demand and receive all such fees as are or may hereafter be established, for any service which he shall or may do, as an attorney and counsellor at law.

License, how obtained.

SEC. 2. No person shall be entitled to receive a license as aforesaid, until he hath obtained a certificate from the court of some county of his good moral character.

Certificate of good moral character.

SEC. 3. It shall be the duty of the clerk of the supreme court, to make and keep a roll or record on good paper,

Attorneys.

Names of attorneys enrolled by clerk of supreme court

stating at the head or commencement thereof, that the persons, whose names are thereon written, have been regularly licensed and admitted to practice as attorneys and counsellors at law within this state, and that they have duly taken the oath to support the constitution of the United States, and such other oaths, as may be and are required by law, which shall be certified and endorsed on the said license.

SEC. 4. And no person whose name is not subscribed or written on the said roll, with the day and year, when the same was subscribed thereto or written thereon, shall be suffered or admitted to practice, as an attorney or counsellor at law, under the penalty hereinafter mentioned, any thing in this law to the contrary notwithstanding: and the judges of the supreme court, in open court, shall have power to strike the name of any attorney or counsellor at law from the rolls for malconduct in his office: *Provided always*, that every, attorney before his name is struck off the roll, shall receive a written notice, from the clerk of the supreme court, stating distinctly the grounds of complaint, or the charges exhibited against him; and he shall, after such notice be heard in his defence, and be allowed reasonable time to collect and prepare testimony for his justification: and every attorney, whose name shall, at any time, be struck off the rolls by order of the court, in manner aforesaid, shall be considered as though his name had never been written thereon, until such time, as the said judges, in open court, shall authorize him again to subscribe the same.

Judges may punish attorneys for contempt.

SEC. 5. The judges of the supreme court, and the judges of the several circuit courts, shall have power to punish in a summary way, according to the rules of law and the usages of courts, any and every attorney and counsellor at law, who shall be guilty of any contempt in the execution of his office; and every attorney and counsellor at law receiving money for the use of his client, and refusing to pay the same over when demanded, may be proceeded against in a summary way, by motion; and all attorneys and counsellors at law, judges, clerks, and sheriffs, and all other officers of the several courts, shall be liable to be arrested and held to bail, and shall be subject to the same legal process, and may in all respects be prosecuted and proceeded against, in the same manner, as other persons are, except in such cases, and at such times, as they may be privileged by statute from arrest.

Judges may not practice, &c.

SEC. 6. No person shall be permitted to prosecute as an attorney or counsellor at law, by instituting, defending, or conducting any action, plaint, suit, or plea, in any court whatever, who holds a commission as a judge of the supreme or circuit courts, or any person, who holds a commission of sheriff or coroner, or who acts as a deputy sheriff, jailor or constable, be permitted to practice as an attorney or counsellor at law, in the county in which he has been

Attorneys.

Attorney,
take oath.

commissioned or appointed; nor shall any clerk of the supreme or circuit courts, be permitted to practice as attorneys or counsellors at law in the court of which he is clerk; and no person shall be permitted or suffered to enter his name upon the roll or record, to be kept as aforesaid, by the clerk of the supreme court, or to do any official act appertaining to the office of an attorney or counsellor at law, until he hath taken an oath to support the constitution of the United States, and the constitution of this state, an oath of office, and such other oaths as may be required by the laws of the state; and the person administering such oath, shall certify the same on the back of the license, which certificate shall be a sufficient voucher to the clerk of the supreme court, to enter or insert, or permit to be entered or inserted, on the roll of attorneys and counsellors at law, the name of the person, of whom such certificate is made.

SEC. 7. The following oath of office shall be administered Oath. to every attorney and counsellor at law, before they subscribe the respective rolls, to wit: I swear or affirm, that I will, in all things faithfully execute the duties of an attorney at law, or duties of counsellor at law, as the case may be, according to the best of my understanding and abilities.

SEC. 8. Any person producing a license, or other satisfactory voucher, proving that he has been regularly admitted an attorney at law, in any court of record within the United States, and that he is of good moral character, may be admitted to an examination for the degree of an attorney and counsellor at law; and any attorney and counsellor at law residing in any of the United States, who is of good moral character, may, at any time, on application, be admitted to an examination for the degree of an attorney and counsellor at law, within this state.

Attorneys from other states admitted on examination.

SEC. 9. If any person or persons, not licensed as aforesaid, shall receive any money or other species of property, as a fee or compensation for services rendered or to be rendered by him or them, as attorney or attorneys, counsellor or counsellors at law, all monies, so received, may be recovered back, with costs of suit, by an action or actions, for money had and received, and property delivered or conveyed for the purpose aforesaid, or the value thereof may be recovered back, with costs of suit, by the person delivering or conveying the same, by an action of detinue or trover and conversion; and the person or persons receiving such money or property, shall forfeit threefold the amount or value thereof, to be recovered with costs of suit, before any magistrate, if within a magistrate's jurisdiction; but if not, before any court of record by action of debt or quitam, the one half to the use of the person who may sue for the same, and the other half for the use of the county in which such suit shall be brought; and if any person or persons

Fees, how re-covered back.

Forfeiture.

Auditor and Treasurer.

Suitors may appear in court without attorneys.

shall sign, or cause to be assigned, the name of an attorney, or either of the judges of the supreme court, to any certificate or license provided for by this act, with intent to deceive, such person or persons, shall be deemed guilty of forgery, and may be prosecuted and punished accordingly.

SEC. 10. Plaintiffs shall have the privileges of prosecuting, and defendants the privilege of defending in their proper persons; and nothing herein contained shall be so construed, as to debar them therefrom; nor shall any thing herein contained be so construed, as to effect any person or persons, heretofore admitted to the degree of an attorney and counsellor at law, according to the rules of the former general court, so as to subject them to a further examination, or cause them to renew their license.

CHAPTER IX.

An Act concerning the Auditor of Public Accounts and the Treasurer of the State.

[APPROVED, DECEMBER 11, 1816.]

Auditor to give bond.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the auditor of public accounts, previously to his entering on the duties of his office, shall give bond with such security as shall be approved of by the governor, in the penal sum of ten thousand dollars, payable to the governor and his successors in office, in trust for the benefit of the state; conditioned for the true and faithful performance of the duties enjoined and required by law to be performed by such auditor, and for the safe delivery to his successor, of all books, vouchers, and other effects belonging to his office; the execution of which bond, being duly acknowledged before some person authorized to take the acknowledgement of deeds, shall be deposited by the governor in the office of secretary of state and there recorded.

SEC. 2. The former treasurer in office under the territorial government, and every person or persons whatever, having in his or their possession, any of the public books or papers, accounts or vouchers, belonging or appertaining to the office of auditor or treasurer, are hereby authorized and required to deliver the same to the auditor of this state, who is hereby authorized to receive the same: and if any such person or persons aforesaid, shall refuse or neglect within fifteen days after demand made by the said auditor, to deliver up to him on oath, all and every the books, papers, accounts, or vouchers aforesaid, and all and every such person or persons so offending, shall forfeit and pay any sum

Transfer of books and papers in the hands of the former treasurer.

Auditor and Treasurer.

not exceeding five hundred dollars, to the use of the state, to be recovered by motion of the auditor or by indictment, in any court of record of competent jurisdiction; and the said auditor shall on demand, deliver over to the treasurer of the state, who is hereby authorized to receive the same, all books, papers, accounts, and vouchers, which may come into his possession by authority aforesaid, and which belong or appertain to the treasury department.

SEC. 3. The said auditor shall keep all accounts that may arise between this state and any other state or territory, and with the United States, or any individual, and shall keep fair, distinct, and clear accounts of all the revenues and expenditures of the state of every kind and nature whatever: all accounts between this state and the officers of government, entitled to receive from the treasury salaries or wages fixed by law: all accounts of members of the general assembly, and of any person or persons having demands for money from the treasury, shall be rendered into the office of the said auditor where they shall, without delay, be liquidated, adjusted, and settled; and upon settlement of any such account, the said auditor shall, by warrant drawn on the treasurer of the state, direct the payment of the amount due to the party entitled to receive the same, and having entered such warrant in his books and filed and deposited the accounts and vouchers in his office, he shall deliver the warrant to the party in whose favour it is drawn: *Provided however,* That the auditor shall audit no account, nor give any certificate or warrant which would enable any person to receive any money, unless in cases particularly authorized by law.

SEC. 4. The said auditor shall liquidate, adjust, and settle the accounts of all public debtors, and of all collectors of any revenue or tax levied by act of the general assembly, and payable in the treasury, or of any money due to the public, and shall call upon such debtors or their representatives to render accounts at proper times, and discharge such balance as may be found due to the state, and upon their failure so to do, the said auditor shall take the most effectual steps for the speedy recovery of the same, and though it should appear on trial that the defendant owe no balance to the public, yet his having failed to render an account to the auditor, and to take from him his receipt, shall subject him to the payment of all costs incurred by such proceedings to the state.

SEC. 5. The said auditor shall keep a book, in which shall be entered every warrant he draws on the treasurer, in the order he issues them, in such manner as to shew the date, the name of the person in whose favour drawn, and the nature of the claim upon which it is founded, and shall carry such entry into a book of general accounts, under

His further duties.

Further du-

ties.

Auditor and Treasurer.

separate and distinct heads. He shall furnish the general assembly, annually, during the first week of their session, and as often as they may require, a statement or abstract of the public accounts generally, together with an account of all balances due to and from the state; and the books, papers, and transactions of his office, shall be open at all times to the inspection of a committee of the general assembly or of either branch thereof, and also to the inspection of the governor.

Treasurer to give bond.

SEC. 6. *Be it further enacted,* That the treasurer of the state, shall not be capable of executing the duties of his office, until he hath given bond with such security, as shall be approved of by the governor, in the penal sum of thirty thousand dollars, payable to the governor and his successors in office, in trust, for the use of the state, conditioned for the faithful accounting for, and paying all such sums of money as shall be received by him from time to time, and for the faithful performance of all other duties enjoined and required by law to be performed by such treasurer, and for the safe delivery to his successor of all books, vouchers, monies, and other effects belonging to his office; which bond shall be executed, acknowledged, and recorded, in the same manner as is prescribed in the first section of this act, for the execution, acknowledgment, and recording of the bond to be given by the auditor.

To receive taxes, &c.

SEC. 7. The said treasurer is hereby authorized and required, to receive of the several collectors of the public revenue, all taxes arising on lands or other property, and all other public money payable into the treasury by virtue of any act or acts of the general assembly. And it shall not be lawful for the treasurer to pay or receive any money on account of the public, but on warrant or certificate of the auditor, except the auditor's salary.

His further duties.

SEC. 8. The treasurer shall keep in books provided for that purpose, correct accounts of all the money received by him from time to time, on the respective taxes and impositions, or from any other source, by virtue of any act or acts of assembly; also correct accounts of all such sum or sums of money as he shall pay out of the treasury pursuant to such act or acts; which accounts shall be so kept that the nett produce of the several and respective taxes and impositions received in, and the money paid out of the treasury for every particular service, may appear separate and distinct from each other, and a full statement thereof, shall by the treasurer be laid before the general assembly annually, during the first week of their session, and as often as they may require the same; and the books, papers, and transactions of his office, shall be at all times open for the inspection of a committee of the general assembly, or of either branch thereof, and also to the inspection of the governor.

Auditor and Treasurer.

SEC. 9. When any public debtor shall hereafter pay any sum or sums of money in the public treasury, the treasurer on receiving the same, shall forthwith make out a receipt Further duty. for the amount, and carry the same to the auditor, who is hereby authorized and required immediately to give to the treasurer his receipt therefor, and the treasurer shall deliver the said receipt to the person who shall have paid him the money therein specified.

SEC. 10. The treasurer shall make out an account of all his payments, and of the warrants on which such payments were made, and shall deliver the same monthly to the auditor; and a list of such payments and warrants shall be made out by the auditor in a book kept for that purpose.

SEC. 11. If the treasurer shall divert or misapply any of the money paid into the treasury for public use, contrary to any act or acts of assembly, by virtue of which the same was raised or appropriated, the said treasurer, for such offence shall forfeit his office, and be incapable of holding any office of trust or profit whatever, under the state, and moreover shall be liable to pay double the amount so misapplied, to be recovered for the public use, by indictment, in any court of record of competent jurisdiction.

Penalty for malfeasance in office.

SEC. 12. There shall be a committee appointed by the general assembly annually, to examine into the state of the offices of the treasurer and auditor: the said treasurer is hereby required to lay before such committee, all the accounts and vouchers of the treasury for money received or paid out for any purpose whatever, and produce the money in his hands, and the committee shall make a fair statement of all monies received and paid out of the treasury, and for what purposes, and of the money on hand, and report the same to the assembly, who shall cause such statement of the receipts and expenditures of the public money, to be attached to and published with the laws at every annual session of the general assembly. If the said committee should discover that any money paid into the treasury, had been applied to any use not warranted by law, they shall report the same to the general assembly. It shall be the duty of the said committee in their examination of the auditor's books and papers, to mark without defacing, all the treasurer's receipts, which may be the foundation of a charge against him in such of the auditor's accounts as the said committee shall examine, in such manner as shall shew that the said receipts had been examined by the committee.

Treasurer's books to be inspected.

SEC. 13. The salary of the auditor of public accounts shall be four hundred dollars per annum, payable in quarterly payments by warrant drawn on the treasurer, by the governor for that purpose; and the salary of the treasurer of the state, shall be four hundred dollars per annum, payable in quarterly payments, by warrant drawn in his favour.

Salary of auditor, & treasurer.

for that purpose by the auditor; which salaries shall commence immediately upon their giving such security as prescribed by this act, and taking such oath or affirmation as required by the constitution of this state.

This act to take effect from and after its passage.

CHAPTER X.

An Act concerning Clerks.

[APPROVED, JANUARY 31, 1824.]

Clk of the supreme court, his residence.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the clerk of the supreme court shall reside and keep his office at the seat of government, and the clerks of the several circuit courts, shall severally keep their offices open each and every day of the year, (Sundays and the fourth of July excepted,) from the hours of nine o'clock in the morning until two o'clock in the afternoon, during which time, they are severally required to give due attendance, either in person or by deputy, and at all other times within reasonable hours, when thereto required by any person having business to transact, in any of said offices, and the clerks of the supreme and circuit courts, shall procure for the use of their respective offices, all the necessary books well bound, one of which shall be kept as a complete record book, in which they shall severally record, at full length, all cases necessary to be recorded, and shall make up the records of each term on or before the first day of the next succeeding term. The said clerks shall, with every execution they may severally issue, make out and deliver to the officer, who may receive the same, a detailed bill of all the costs due on such execution, to be, by said officer, delivered to the party against whom the said execution may issue, upon his, her, or their replevying or paying the same, together with his certificate thereon, that the said execution was so replevied or paid, and any clerk or officer concerned in the execution of process, who shall neglect or refuse to perform, by himself or deputy, any of the duties enjoined upon him by the provisions of this section, shall, on conviction, forfeit and pay for each neglect or refusal, a sum not less than five, nor more than fifty dollars, to be recovered by presentment or indictment.

Offices of clerks, when to be kept open.

Procure books

Records, when made.

Cost bill to be made out.

Clerks may appoint deputies.

Clerks to administer oaths, &c.

circuit courts, shall, in all cases, be held responsible for the official acts of their deputies.

SEC. 3. Should any of the clerks of the circuit courts, fail to make returns of the votes given for representatives to the congress of the United States, for governor and lieutenant governor as prescribed by the constitution of this state, such clerk shall be deemed guilty of a high misdemeanor, and on conviction by impeachment shall be removed from office and fined in any sum not exceeding five hundred dollars.

SEC. 4. Whenever any clerk of the circuit court shall resign, die, or be removed from office, it shall be the duty of the proper court, to appoint a clerk pro tempore, and if such vacancy shall happen in vacation, the judges of said court, or a majority of them, shall meet as soon as practicable thereafter, as a court, and proceed to fill such vacancy, and the person so appointed, shall continue in office until a clerk shall be duly elected and qualified, and the person so appointed, shall, immediately thereon, take an oath or affirmation of office, and enter into bond with approved security, as in other cases.

CHAPTER XI.

An Act to prohibit the wearing of Concealed Weapons.

[APPROVED, JANUARY 14, 1820.]

Be it enacted by the General Assembly of the state of Indiana,

That any person wearing any dirk, pistol, sword in cane, or any other unlawful weapon, concealed, shall be deemed guilty of a misdemeanor, and on conviction thereof, by presentment or indictment, shall be fined in any sum not exceeding one hundred dollars, for the use of county seminaries: *Provided however,* That this act shall not be so construed as to affect travellers.

Persons wearing concealed weapons indefatigable.

CHAPTER XII.

An Act for the formation of Congressional Districts, and for the election of Senators and Representatives to Congress.

[APPROVED, JANUARY 30, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That when the term of any senator in congress is about to expire, it shall be the duty of the general as-

Congressional Districts.

Election of senator.

ssembly, at their session last preceding the expiration of the term of service of such senator, to elect by joint ballot of both houses, on such day and at such place, as they may agree upon, a suitable person to serve as a senator from this state, to the congress of the United States, for the next succeeding six years: but no person shall be considered elected, unless he shall receive a number of votes, equal to a majority of all the voters present.

Tellers.

SEC. 2. In all such elections, the president of the senate shall preside: there shall be two tellers, one to be appointed by the president of the senate, and one by the speaker of the house of representatives, in their houses respectively, before they meet to conduct such election; notice of which appointments shall be given to each house respectively when made, by such messenger as the president of the senate, and the speaker of the house of representatives may direct; and in voting, each member shall be called alphabetically, beginning first with the senators; and when voting, it shall be the duty of the secretary of the senate, and clerk of the house of representatives, to attend and take down the name of each person voting; also a tally of the votes received by each person voted for, as the tellers read the tickets; which tally papers they shall compare after the votes are counted out, and if they agree, they shall jointly sign each of them, and hand them to the president of the senate, who, together with the speaker of the house of representatives, shall examine them; and if any one person is elected, he shall be proclaimed by the president of the senate, duly elected to serve as a senator of this state, in the senate of the United States, for the term of six years, from and after the third day of March next succeeding such election; but if no person should be elected, they shall continue to ballot again and again until some person is elected: *Provided however*, if after five ballottings there should be no election, the president of the senate may adjourn such election to some future day during said session.

President of the senate to proclaim election.

Election may be adjourned.

Certificate of election.

Vacancies, how filled.

First district.

SEC. 3. It shall be the duty of the president of the senate, and speaker of the house of representatives, to certify to the governor the person elected, whose duty it shall be to give the person a certificate of his election under his hand, and seal of state.

SEC. 4. Senators to fill vacancies that may happen in the senate of the United States, shall be elected as heretofore directed in this act; and when any vacancy may happen during the recess of the general assembly, the governor shall appoint a person to fill such vacancy, until superseded by a person elected as heretofore directed.

SEC. 5. That the counties of Orange, Perry, Spencer, Warrick, Vanderburgh, Posey, Gibson, Pike, Dubois, Knox, Daviess, Martin, Sullivan, Vigo, Parke, Monroe, Lawrence,

Constables.

Wabash, Greene, Owen, Morgan, Putnam, Vermillion, Hendricks, and Montgomery, shall compose one congressional district, and shall be known and designated, as the first congressional district for the state of Indiana, and shall be entitled to one representative in the congress of the United States.

SEC. 6. The counties of Jefferson, Clark, Jackson, Washington, Harrison, Crawford, Floyd, Scott, Bartholomew, Jennings, Marion, Hamilton, Johnson, Shelby, Madison, and Delaware, shall compose one congressional district, and shall be known and designated as the second congressional district of the state of Indiana, and shall be entitled to one representative in the congress of the United States.

SEC. 7. That the counties of Henry, Rush, Decatur, Randolph, Wayne, Franklin, Fayette, Dearborn, Union, Switzerland, Ripley, and Allen, shall compose one congressional district, and shall be known and designated as the third congressional district of the state of Indiana, and shall be entitled to one representative in the congress of the United States.

SEC. 8. The election for representatives from this state to the nineteenth congress, agreeably to the districts aforesaid, shall be held on the first Monday of August eighteen hundred and twenty-four, and representatives to each succeeding congress, shall be elected biennially thereafter.

Second district.

Third district.

Election to
nineteenth
congress,
when held.

CHAPTER XIII.

An Act for the appointment of Constables, and defining their duties.

[APPROVED, JANUARY 22, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That it shall be the duty of each and every board of county commissioners, at their meeting next ensuing the session of the general assembly annually, to appoint one or more respectable person or persons, in each and every township, within their respective counties, to serve as constables; and the constables so appointed, shall continue in office, by virtue of such appointment, for the term of one year, and until their successors shall be appointed and qualified into office; but nothing herein contained shall oblige them to serve for a longer term than three months, after the expiration of one year as aforesaid.

SEC. 2. Every constable, before he enters upon the duties of his office, shall take the following oath or affirmation, viz: Oath,
“I do solemnly swear (or affirm, as the case may be) that I

Board of
county com-
missioners to
appoint con-
stables.

Term.

Constables.

Certificate.

will faithfully discharge the duties of constable within the county of according to the best of my understanding and abilities;" which oath or affirmation shall be taken before any clerk or judge of the circuit court, or before any justice of the peace of said county; and the person administering such oath, shall make out a certificate thereof, and cause it to be filed in the office of the clerk of the county.

Bond.

SEC. 3. It shall be the duty of every constable, previous to taking the oath aforesaid, to execute, to the acceptance of the board of county commissioners, a bond with at least two freeholders as his security, payable to the county treasurer and his successors in office, in the penal sum of five hundred dollars, conditioned for the faithful performance and discharge of the duties of his office as constable; which bond shall be filed by the clerk of the board of county commissioners as aforesaid, for the benefit of each and every person who may sustain injury by reason of the malfeasance, nonfeasance, or misfeasance of such constable.

Duty.

SEC. 4. It shall be the duty of every constable to apprehend and bring to justice, all felons and disturbers of the peace; to suppress all riots and unlawful assemblies, and in other respects to keep the peace in the county wherein he shall have been appointed, and also to serve and execute all warrants, writs, precepts, and other process to him directed, and in all respects to do and perform all things appertaining to the office of constable.

Note the time
of receiving
process.

SEC. 5. Each and every constable shall, on the receipt of all process to him directed, note on the same, the time of his receiving such process, and shall endorse the manner in which such process shall have been served or executed, with the time and manner of serving and executing the same.

Return.

Vacancy, how
filled.Justice make
special ap-
pointments.Constable at-
tend on re-
turn day.

SEC. 6. Whenever a vacancy shall happen in any township, by death, removal, resignation, or disqualification of any constable, it shall be lawful, and it is hereby made the duty of any justice of the peace, in such township, to appoint a constable to fill such vacancy, until the next meeting of the board of county commissioners of the proper county, who shall confirm such appointment, or appoint another; and the constable so appointed, shall take the same oath, and execute the like bond required by this act; also any justice of the peace may appoint any suitable person to act as constable for a special purpose, in a criminal case, or in case of attachments, where there is a probability that the criminal will escape, or where goods and chattels will probably be removed, if delay is made for the purpose of applying to the regular constable of the township.

SEC. 7. It shall be the duty of each and every constable to attend before the justice of the peace, on the return day of the process to him directed by such justice, and keep or-

Constables.

Failing to pay
over money,
how dealt
with.

der and decorum, and execute all legal commands of such justice, under a penalty not exceeding three dollars for each neglect, to be assessed by such justice against the constable, but no fine shall be assessed as aforesaid, if the constable produces satisfactory evidence, either by others, or his own oath, that he was prevented by sickness, or other unavoidable circumstances.

SEC. 8. If any constable shall collect any money, on an execution or otherwise, by virtue of any precept, issued by any justice of the peace, to him directed, and shall fail to pay the same over to the justice issuing such execution or other precept, within six days from and after the return day of such precept, or shall fail to make return of any precept to him directed, within six days from the return day thereof, it shall be the duty of the justice of the peace issuing such process, to issue a scire facias forthwith, to some other constable of the proper township, or if there is no other constable in such township, to any other person he may appoint, who is willing to serve the same, directing him to summon such constable so failing to appear before him within five days, to shew cause, if any he can shew, why judgment should not be entered against him, for the amount of the money so received by him, or of the sum he ought to have collected; and if good cause cannot be shewn why he did not pay over the money at the proper time, or make return of the precept to him directed, on the proper day, then the justice shall proceed to enter up judgment against such constable for the proper sum, together with the costs of issuing such scire facias, and ten per centum damages, for the benefit of the party injured; on which judgment there shall be no stay of execution; and any justice, failing as above directed, shall be liable in damages to the party injured.

Ten per cent.
damages.

SEC. 9. In the service of process in criminal cases, and in the service of executions, and all other process, any justice of the peace may or has authority to issue; the limits of a constable are hereby made coextensive with the county in which they are appointed, and in case of the escape of any person or persons from a criminal process, or charged with a criminal offence, such constable may pursue after and take such absconding person or persons in any county in this state: in the service of subpoenas for witnesses, they shall be confined to their respective counties; and all constables appointed by the authority of this act, shall be ministerial officers of the courts, held by justices of the peace of their proper townships.

Process, when
served, &c.

SEC. 10. The sales of property, made by any constable under the authority of this act, shall be made between the hours of ten o'clock A. M. and five P. M. at the house or on the premises, where such property was executed, or at

Sales of pro-
perty, when
made.

Neither justice nor constable may purchase.

one of the most public places within such township; and if the justice who issued the execution, or the constable making such sale, shall, either purchase directly or indirectly any of the property so sold, such justice or constable, so offending, shall forfeit and pay, for every such offence, a sum not exceeding twenty dollars, nor less than ten dollars, together with costs of suit, to be recovered by presentment or indictment, for the use of the seminary of the proper county, and shall, moreover, be liable to the party aggrieved.

SEC. 11. It shall be the duty of each and every constable, when any execution shall come into his hands, on which he shall be compelled to sell any property by him taken by virtue of the same, to take bond, with sufficient security of the defendant, if tendered, for the delivery of such property, at the time and place where the same shall be advertised for sale, after which time, he shall be liable to the plaintiff in such execution, for the amount of such property, if the same shall not exceed in amount, the sum due on such execution, and should such property amount to a greater sum than may be due on such execution, then said constable shall be liable to the plaintiff in such execution, for the amount due on such execution, together with costs, and ten per centum in damages. And should such defendant or his security fail to deliver the property agreeably to said bond, then such defendant and his security shall be liable, to said constable, for the amount of said property, if the same shall not exceed in amount, the sum due on such execution, but should such property exceed the amount due on such execution, then said defendant and his security shall be liable on their bond to said constable, for the amount due on such execution, together with costs, and ten per centum in damages; and the said plaintiff in the first case, and the said constable in the second, shall severally, be entitled to a judgment pursuant to their several remedies, as defined in this section, before any justice of the peace in the proper county, unless sufficient cause be shewn on the trial, on giving the opposite party, three days previous notice, on which judgment there shall be no stay of execution, nor appeal as in other cases, unless the appellant or appellants shall first make and file an affidavit, before the justice, before whom judgment was rendered, that he, she, or they believe, that he, she, or they have merits in their appeal, and that he, she, or they do not take the same for the purpose of delay, but for the furtherance of justice.

Bond for delivery of property.

Defendant & security liable on the bond.

No stay of execution nor appeal.

Purchasers, neglecting to make payment, liable to damages.

SEC. 12. Any person purchasing or bidding off property at constable's sale, and failing or refusing to pay therefor, agreeably to the terms of such sale, shall be liable to damages, not exceeding half the amount of such purchase or bid, to be recovered before any justice of the peace, one half of which damages shall go to the use of the constable, and the

other half thereof to the party to whom the money arising from such sale, would be due and payable. All laws and parts of laws, heretofore in force in this state, regulating the appointment of constables, and defining their duties, be, and the same are hereby repealed.

CHAPTER XIV.

An Act concerning Corporations.

[APPROVED, JANUARY 31, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That whenever hereafter any corporate body shall be dissolved, the lands, tenements, hereditaments, goods, chattels, rights, credits, monies, and effects, belonging to the same, shall pass, as incident to the franchises of such corporation, and be vested in the state of Indiana as the legal proprietor: and right of action to recover and reduce the same, in whose possession soever they may be, into the hands and control thereof, shall belong to the state and its assigns; and shall be for the purpose and intent to discharge, for what pur-

pose.

settles, and pay all contracts, obligations, and trusts, of what description soever the same may be, contracted or incurred by such corporation during the existence of their corporate privileges; and all contracts, obligations, and trusts made between such corporation and other persons, shall be and remain in full force: and all debts, dues, and demands shall and may be prosecuted and recovered, in the name of the state of Indiana, or her assigns, against all persons, against whom rights or actions in favour of such corporation existed, either at law or in equity, prior to the dissolution of such corporation.

Corporate body dissolved, property vest in the state.

SEC. 2. That the legal capacity, in which the said state shall take the estate real and personal aforesaid, shall be conjoint of that of heir and administrator: and the duties and trusts, thereby created, shall be performed by the treasurer of state and auditor of public accounts, or such persons, as they may assign the same to; such assigns always giving bond with penalties and sureties to be approved of by said treasurer and auditor, payable to the state of Indiana, and conditioned for the faithful performance of the trusts and duties in them vested.

Duties and trusts performed by the treasurer and auditor.

SEC. 3. That in distributing the estate real and personal aforesaid, all the creditors of any such corporation shall after paying the charges and expenses incident to the execution of the trusts and duties aforesaid, be paid, in propor-

Distribution, how made.

tion to their several claims, so far as the estate real and personal aforesaid will pay the said creditors, and if there be a residue in any case, it shall, after payment of the debts, be a trust for the holders of stock in such corporation, to be paid them, according to the value of the stock owned by them in proportionate shares. And in all cases after the discharge of all claim of a legal or equitable nature, continued in force by the provisions of this act upon the property aforesaid of such corporation in favour of other persons, the state of Indiana shall be the legal owner of the residue.

CHAPTER XV.

An Act to regulate the mode of doing County Business.

[APPROVED, JANUARY 31, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state County board of Indiana, That there shall be a county board of justices established, in each and every county in this state, for the purpose of transacting county business; to be composed of the justices of the peace of the respective counties, who shall meet together and organize themselves, agreeably to the provisions of this act; and after being organized as aforesaid, shall be known and considered in fact, law, and equity, a body politic and corporate, by and under the name and style of, "The board of justices of the county of _____," and as such, and by and under such name and style, may sue & be sued. sue and be sued, plead and be impleaded, defend and be defended, answer and be answered unto, in any court of justice whatever; and to do and transact all manner of business on behalf of their respective counties, that may be assigned them from time to time by law; and in all cases where the county may, or shall have been injured in its goods, chattels, lands, tenements, rights, credits, and effects, or contracts, such board of justices, shall by and under their corporate name and style, (without setting out any of their individual names,) bring such suit or suits, action or actions, either in law or in equity, as they may deem best calculated to obtain redress for any such injury, in the same way and manner, that a private individual might, could or would do; and in all cases where any person or persons, now have, or hereafter may have any claim, of any name or nature, against any county, suit may be brought thereupon in any court of law or equity, against such board of justices, in

their corporate capacity aforesaid, and judgment and execution had thereon, as in other cases.

SEC. 2. It shall be the duty of each and every justice of the peace, to meet at the places of holding courts in their respective counties, on the first Monday of September next, and then and there proceed to organize themselves into a county board of justices, by electing some one of their body as president of such court, and causing their names to be entered in the record book of the county, as members of such board: *Provided however,* that in all cases where the circuit court shall be in session in any county in this state, on the first Monday of September next, it shall be the duty of the justices of the peace in such county, to meet on the Monday succeeding the term of said court, and perform the duties required by the foregoing provisions of this section.

SEC. 3. That the justice so elected as president, shall serve as such, for and during the term of one year, and until another shall be elected. It shall be his duty to sign all their proceedings, and pronounce the decisions of the court.

President signs proceedings.

SEC. 4. That the county board of justices, shall meet at the usual place of holding the circuit courts in their respective counties, on the first Mondays of January, March, May, July, September, and November in each and every year; and any three justices being present at any session (except those hereinafter excepted) shall be authorized to transact business: *Provided however,* that in all cases where the circuit court of any county shall set on any of said days, the county board of justices for that county, shall meet on the Monday succeeding such term of the circuit court.

SEC. 5. The clerks of the circuit courts shall by virtue of their office, attend the meetings of the county board of justices, and keep a record of their proceedings, and do such other business, as shall be required by law; and the sheriff of the county, shall also by himself or deputy, attend said board and execute their orders.

Clerks.

Sheriff attends board.

SEC. 6. Said county board of justices shall elect a president pro tem., in the absence of their president, who shall have the same powers, and do the same duties as is required of the president of such board; and they shall make and use a common seal for the purpose of sealing their proceedings when necessary; a copy of which proceedings, certified by the clerk and sealed with the seal of such board, shall be good evidence of such proceedings, on the trial of any cause in any of the courts in this state; and it shall be the duty of said county board, at their November session in each year, to make out a fair and accurate statement of the receipts and expenditures of the county for that year, and have the same set up at the court house door, or published in some newspaper printed in the county.

Statement of receipts & expenditures.

SEC. 7. The county board of justices, shall, at their Ja-

Appoint listers, constables, overseers of the poor, &c.

Levy tax and make out duplicate.

Justices failing to attend, fined, &c.

May sit three days.

Powers of the board of commissioners, transferred, &c.

Appropriations, how made.

nuary session in each year, appoint a suitable number of listers, constables, overseers of the poor, inspectors of elections, superintendants of school sections, fence viewers, a county treasurer, and a pound keeper; and it shall be their duty at other meetings, to fill all vacancies that may happen in any of their appointments.

SEC. 8. It shall be the duty of the county board of justices, at their May session in each year, to receive and inspect the listers books, and levy a county tax according to law, and cause their clerks to make out a duplicate for collection accordingly: *Provided however,* That it shall require five members of said board to constitute a quorum to do business, at their May and November sessions; and in all cases when a quorum shall not attend, such as do attend, shall adjourn from day to day, and compel the attendance of absent members.

SEC. 9. It shall be the duty of all the justices of the peace in each and every county, to be punctual in their attendance at their January, May, and November session, and for every failure thereof without a reasonable excuse, such justice shall be fined upon presentment or indictment, in any sum not exceeding twenty dollars, for the use of county seminaries.

SEC. 10. The county board of justices, is hereby authorized to sit three days at each session, if the business before them require it, and they shall have and possess all the necessary power to carry into effect, any of the powers hereby granted, and to transact all business that concerns the county; their decisions however subject to be appealed from to the circuit court, by any person aggrieved.

SEC. 11. In all cases where the justices of the peace shall organize themselves into a county board, under the provisions of this act, the powers and authority heretofore given to the board of county commissioners, shall from that time be transferred to said board; and from and after the said first Monday of September next, the powers and authority heretofore given to said board of county commissioners shall be revoked and annulled, and all the books, papers, records, and unfinished business, shall be delivered to the county board.

SEC. 12. There shall be no money appropriated by said board, without the consent of three members at least; and in all cases where any person is authorized or required to do or perform any act or duty, at any particular session of the board of county commissioners, such person is hereby authorized and required, to do and perform the same duty or act, at the session to be holden under the provisions of this act, in the month which said act or duty is required to be done, if there be a court holden in such month, but if there be no court holden in such month, then and in that case,

such person shall do and perform such act or duty, at the next succeeding session.

SEC. 13. That justices of the peace shall, from and after the first Monday of September next, be exempt from militia duty, and serving on juries, and from working on roads and public highways, for a capitation tax, and shall receive no other pay for any of the duties enjoined upon them by this act.

SEC. 14. All suits, pleas, plaints, prosecutions and proceedings which may be pending in any court in this state, to be tried for or against any board of county commissioners, previous to the taking effect of this act, shall be prosecuted to final judgment and execution, in the same name and manner, as the same might have been done, had this law not have been passed, and all contracts either written or verbal, made by such boards of county commissioners, previous to the taking effect of this act, shall remain valid in fact, law and equity; and suit may be thereupon brought, in the same way and manner, as the same might have been, had this act not been passed; with this difference only, that the corporate name of the board of justices shall be used, instead of the name of the county commissioners.

SEC. 15. That nothing in this act shall be so construed, as to prevent the county commissioners of Marion county from superintending and receiving from the undertakers, the court house in Indianapolis, agreeably to the contract heretofore made and entered into, between the undertakers, and the said board of county commissioners.

SEC. 16. That all the powers and privileges vested in, and duties required of the board of county commissioners in this state, shall be and the same are hereby transferred to, and vested in the county board of justices created by this act. And such county board is hereby required and empowered, to do and perform all such matters and things in every particular whatever, as the board of county commissioners are required to do and perform; any thing herein contained to the contrary notwithstanding.

SEC. 17. All laws governing, and in anywise relating to the board of county commissioners, shall be taken and deemed, as laws to govern and relate to the county board of justices, created under the provisions of this act.

This act to take effect and be in force from and after the first Monday in September next.

Justices ex-empt from militia duty, &c.

Proceedings &c. as if this act had not been passed.

Commissioners of Marion, receive the court house agreeably to contract.

Powers and privileges vested, &c.

Laws relating to the board of commissioners, applica-ble to justices court.

County Commissioners.

CHAPTER XVI.

An Act to establish a Board of County Commissioners.

[APPROVED, JANUARY 31, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That there shall be and hereby is organized, in each county in the state, a board of commissioners for transacting county business, to consist of three qualified electors, any two of whom shall be competent to do business, to be elected by the qualified electors of the several counties respectively, one of whom shall be elected annually, to continue in office three years, and until their successors are chosen and qualified.

SEC. 2. At the first election, in pursuance of this act, there shall be elected three commissioners; the person having the highest number of votes, shall serve for three years; the person having the next highest number of votes, shall serve two years; and the person having the next highest number of votes, shall serve one year; but if two or more shall be equal in number, their grade shall be determined by lot, and at all subsequent elections, where there shall be more than one vacancy, the term of service of the person elected, shall be determined by the same rule.

SEC. 3. Each person elected as a commissioner, shall on receiving a certificate of his election, take the oath or affirmation required by the constitution of this state, before some person legally authorized to administer the same; which oath or affirmation being certified on the back of such certificate, under the hand and seal of the person administering the same, shall be sufficient authority for such commissioner to take his seat with and act as a member of the board during the time for which he is elected, and until his successor shall be qualified or sworn into office.

SEC. 4. The commissioners, thus elected and qualified, shall be considered a body politic and corporate, by and under the name and style of the board of commissioners of the county of _____ and as such, and by and under such name and style, may sue and be sued, plead and be impleaded, defend and be defended, answer and be answered unto in any court either of law or equity, and do and transact all business on behalf of their respective counties, that may be assigned them from time to time, by law; and in all cases where their county may or shall have heretofore been injured, or hereafter may be injured, in its goods, chattels, lands, tenements, rights, credits, effects or contracts, such commissioners shall and may, by and under their corporate name and style, (without setting out their individual names,) bring any suit or suits, action or actions, either in law or equity, which may be best calculated to obtain redress for any such

Board of commissioners established.

First election for three commissioners.

Oath.

Certificate of.

Body politic.

Sue & be sued.

County Commissioners.

injury, in the same way and manner, that a private individual might or could do, and may in the like way and manner, by and under their corporate name and style, be sued by any person or persons having any manner of claim against any such county.

SEC. 5. The board of commissioners shall meet, at the Board, when court house, in each and every county, for the purpose to meet aforesaid, on the second Monday of February, May, August and November, in each and every year, and shall continue in session three days at each meeting, if the business require it. But the board of county commissioners in and for the counties of Dearborn, Clark, Knox, Daviess, Sullivan, Vigo and Jefferson, are hereby empowered to sit four days, at each of their sessions, now authorized by law, if the business before them require it, and shall allow their clerk such additional compensation for extra services, as they may think just and reasonable: *Provided however,* If the circuit court shall meet on any of the before mentioned days, the commissioners shall not meet until the Monday following.

SEC. 6. The clerk of the circuit court shall, by virtue of Clerk. his office, attend the meeting of the board of commissioners, and keep a record of their proceedings, and do such other business as he shall be required by law to do, and the sheriff of the county shall also by himself, or deputy, attend said board and execute their orders.

SEC. 7. When any two commissioners shall be present at the meeting of the board, and a division shall take place on any question, it shall be continued until their next meeting, before it shall be finally determined.

SEC. 8. When any vacancy shall happen in the office of Vacancy, how commissioner, the circuit court of the county, or the two filled, associate judges, in vacation, shall appoint a suitable person or persons to fill such vacancy, until the next annual election for commissioners, when such vacancy shall be filled by an election of the electors of the county.

SEC. 9. The commissioners of each county respectively, shall have and use a common seal, for the purpose of sealing Seal. their proceedings, and copies of the same when signed and sealed by the said commissioners, and attested by their clerk shall be good evidence of such proceedings, on the trial of any cause, in any of the courts of this state. The commissioners aforesaid, at their session in November, in every

year, shall make out a fair and accurate statement of receipts and expenditures of the preceding year, and have Statement of the same set up, at the court house door, and at two other receipts and public places in their counties respectively, within ten days expenditures. after their said session. And if the said commissioners, after accepting their appointment, shall neglect or refuse to Commission- do his or their duty in office, he or they so offending, shall, ers may be fin-

ed for neglect
of duty.

on conviction by indictment before the circuit court of the proper county, be fined for any such offence, in any sum not exceeding one hundred dollars.

This act shall take effect and be in force until the first day of September next, and no longer.

CHAPTER XVII.

An Act relative to County Boundaries.

[APPROVED, JANUARY 31, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the district of country within the following boundaries, shall form and constitute the county of Switzerland, to wit: Beginning at a point on the Ohio river, between fractional sections, numbered twenty-two and twenty-seven, in town three, range one west; thence due west to the old Indian boundary; thence northwardly with said boundary line, to the line dividing sections thirty-four and twenty-seven, in township six and range twelve; thence from said boundary line due west, to the north-west corner of section thirty-three, in township six, and range twelve east of the second principal meridian; thence south with the sectional line, between fractional sections, twenty and twenty-one, to the Ohio river, and thence with said river to the place of beginning.

SEC. 2. That the county of Dearborn shall be bounded as follows, to wit: On the south by the county of Switzerland; on the west by the old Indian boundary; on the north by the county of Franklin; and on the east, by the state of Ohio, and the Ohio river.

SEC. 3. That all the district of country included within the following boundaries, shall form and constitute the county of Franklin, to wit: Beginning at the corner of townships seven and eight, on the line of the state of Ohio; thence due west to the northern boundary of the purchase of Grouse land; thence southwardly with said boundary, to the middle of range eleven; thence north to the line dividing townships twelve and thirteen; thence east with said line, to the south-east corner of section thirty-three, in township thirteen, and range thirteen; thence three miles north; thence east to the boundary of Union county; thence with the southern boundary of the same, to the Ohio line, and south with the said Ohio line to the place of beginning.

SEC. 4. That all the district of country included within the following boundaries, shall form and constitute the

Switzerland.

Dearborn.

Franklin.

county of Ripley, to wit: Beginning at the south-east corner of section numbered thirty-one, in township six north, of range numbered ten east, being the south-east corner of Jennings county; thence north with the line of Jennings county, to the Indian boundary, thence north-eastwardly with said boundary, to the line of Franklin county; thence east with said line, to the old boundary line; thence southwardly with said old boundary, to a point thereon, one mile north of the line dividing townships five and six; thence from said point, due west, to the north-west corner of section thirty-three, in township six, range twelve; thence one mile south, and thence due west to the place of beginning.

SEC. 5. That all that district of country, included within the following boundaries, shall form and constitute the county of Fayette, to wit: Beginning at the south-east corner of section numbered thirty-three, in town thirteen north, range thirteen east of the second principal meridian, thence north three miles; thence east to the Union county line; thence north with the same, to the north-west corner of section, numbered thirty-six, in town fifteen, range thirteen; thence west on said line, to a line dividing sections twenty-seven and twenty-eight, in town fifteen, range twelve; thence north on said line, to a line dividing towns fifteen and sixteen; thence west six miles; thence south eighteen miles; thence east to the place of beginning.*

SEC. 7. That all that district of country included within the following boundaries, shall form and constitute the county of Wayne, to wit: Beginning at the south-west corner of Wayne section numbered thirty-two, in township sixteen north, of range twelve east, of the second principal meridian; thence north with the sectional line, to the centre of township eighteen; thence east to the Ohio line; thence south with said line, to the north-east corner of Union county; thence west with the line thereof, to the north-west corner of the same; thence south one mile, to the line of Fayette county, and thence with the same to the place of beginning.

SEC. 8. That all the territory included within the following boundaries, shall form and constitute the county of

*Section six is not inserted in the enroled bill. It was omitted no doubt through mistake in the enrolment. In the engrossed bill it reads as follows:

"SEC. 6. That all that district of country enclosed within the following boundaries, shall form and constitute the county of Union, to wit: Union. Beginning at the south-west corner of section twenty-four, in township thirteen, range thirteen east, second principal meridian; thence east to the south-east corner of section one, town ten, range one west of the first principal meridian, it being the line dividing the state of Ohio from this state; thence north twelve miles, to the north east corner of section twelve, in town twelve, range one west of the first principal meridian; thence west twelve miles, to the north-west corner of section twenty-five, in town fifteen, range thirteen east, second principal meridian; thence south twelve miles to the place of beginning."

County Boundaries.

Randolph.

Randolph, to wit: Beginning at the Ohio state line, where the line dividing townships fifteen and sixteen strikes the same; thence west with said township line, until it strikes the old Indian boundary; thence to, and with the centre line of township eighteen, to the north-west corner of section twenty, in township eighteen, and range twelve east of the second principal meridian; thence north to the line dividing townships twenty-one and twenty-two; thence east to the Ohio state line, and thence with said state line to the place of beginning.

Jefferson.

SEC. 9. That all the territory included within the following boundaries, shall form and constitute the county of Jefferson, to wit: Beginning at a point on the Ohio river, where the line dividing townships one and two strikes the same; thence on a direct line, agreeably to actual survey, to the eastern line of section thirteen, in town two north, range eight east; thence north, to the south-east corner of township three; thence diagonally across the said township three, to the north-west corner thereof; thence north with the line dividing ranges seven and eight, east of the second principal meridian, to the line dividing townships four and five; thence east with said line four miles; thence north two miles, thence east two miles, thence north two miles, thence east two miles, thence north two miles; thence east with the line dividing townships five and six, to a point thereon, two miles east of the line dividing ranges eleven and twelve; thence south with the line of Switzerland county to the Ohio river, and thence with the same to the place of beginning.

Jennings.

SEC. 10. That all the territory included within the following boundaries, shall form and constitute the county of Jennings, to wit: Beginning at the north-west corner of section numbered nineteen, in township eight north, range seven east; thence south with the said line dividing ranges six and seven east of the second principal meridian, to the South fork of the Muscatituck river; thence eastwardly with the same, to the line dividing ranges seven and eight; thence north to the line dividing townships four and five; thence east with said township line four miles; thence north two miles, thence east two miles, thence north two miles, thence east two miles, thence north two miles, thence east with the line dividing townships five and six north, to the south-east corner of section thirty-one, in township six north, range ten east; thence north with the sectional line, to the Indian boundary; thence westwardly with said boundary, to a point from which a line drawn due west, will pass through the centre of township eight, to the place of beginning.

Decatur.

SEC. 11. That all that part of Delaware county included within the following boundaries, shall form and constitute the county of Decatur, to wit: Beginning at the south-

County Boundaries.

west corner of section eighteen, in township eight north, of range eight east of the second principal meridian; thence north fifteen miles, to the south-west corner of section six, in township ten north, of range eight east; thence east three miles, to the south-east corner of section thirty-three, in township eleven north, of range eight east, thence north seven miles, to the north-west corner of section thirty-four, in township twelve north, of range eight east; thence east eighteen miles, to the west boundary of Franklin county; thence south, with said boundary, to the north line of Ripley county; thence with the old boundary line, to the north line of Jennings county; thence west with the Jennings county line, to the place of beginning.

SEC. 12. That all that part of the county of Delaware, included within the following boundaries, shall form and constitute the county of Rush, to wit: Beginning at the south-west corner of section twenty-seven, in township twelve north, of range eight east, of the second principal meridian; thence east eighteen miles, to the south east corner of section twenty-eight, in township twelve north, of range eleven east; thence north to the line dividing townships fifteen and sixteen; thence west eighteen miles, to the north-west corner of section three, in township fifteen north, of range eight east; thence south to the place of beginning.

SEC. 13. That all the district of country included within the following boundaries, shall constitute and form the county of Henry, to wit: Beginning at the south-west corner of Henry Wayne county, on the line dividing towns fifteen and sixteen north, at the south-east corner of section thirty-one, town sixteen north, range twelve east; thence west twenty miles; thence north twenty miles; thence east to the western boundary of Randolph county; thence south with the boundaries of Randolph and Wayne counties, to the place of beginning. The circuit, and all other courts of the county of Henry, shall meet and be holden at the house of Joseph Hobson, until suitable accommodation can be had at the county seat of said county; and so soon as the courts of said county are satisfied, that suitable accommodations are provided, at the county seat of said county, they shall adjourn thereto; after which time all the courts of said county, shall be held at the seat of justice thereof: *Provided however,* that the circuit court of said county, shall have authority to remove from the house of said Joseph Hobson, to any more suitable place in said county, previous to the completion of the public buildings, if they should deem the same expedient.

SEC. 14. That the territory included in the following boundaries, shall form and constitute the county of Floyd, to wit: Beginning on the Ohio river, where the line divid-

County Boundaries.

ing sections six and seven, in township four south strikes the same; thence west with said line to the south-west corner of section three, in town four south, and range five east; thence north with the line dividing sections three and four, to the north-east corner of section sixteen, in township three south, of range five east; thence west with the line dividing sections sixteen and nine, to the south-west corner of section nine; thence north, with the line dividing sections eight and nine, to the south-east corner of section five; thence west, with the line dividing sections five and eight, to the south-west corner of section five; thence north with the line dividing sections five and six, to the north-west corner of section thirty-two, in township two, in range five; thence west with the line dividing sections thirty and thirty-one, to the south-west corner of section thirty; thence north with the range line, to the south-west corner of section eighteen; thence west with the line dividing sections thirteen and twenty-four, in township two, in range four, to the south-west corner of section thirteen; thence north with the line dividing sections thirteen and fourteen in said range, to the corner of sections numbers twenty-three, twenty-four, twenty-five, and twenty-six, in town one south, range four east; thence east from said last mentioned corner, with sectional line, dividing sections twenty-four and twenty-five, in town number one south, in range number four east; thence with the said sectional line east, to the Illinois grant line, in the county of Clark aforesaid; thence with the said Illinois grant line, south forty east, to Silver-creek in said grant, on the south side of lot number sixty-six; thence down said creek with the meanders thereof, on the west side of the same, to the mouth thereof, thence down the Ohio to the place of beginning.

SEC. 15. That the county of Harrison, shall hereafter be bounded as follows, to wit: On the south by the Ohio river, on the west, by the Crawford county line, on the north, by the southern boundary of the county of Washington, until it strikes the line of Floyd county, and on the east, by the county of Floyd.

SEC. 16. That the county of Clark shall be bounded hereafter, as follows, to wit: On the south-east, by the Ohio river; on the south and west, by the county of Floyd; on the north-west and north, by the counties of Washington and Scott; and on the north-east, by the county of Jefferson; and that John Carr of Clark county, and James Denny of Washington county, be and they are hereby appointed commissioners, to designate and mark the line, dividing the counties of Washington and Clark, on the summit of the Silver-creek knobs; who shall meet, at any time and place they may agree on, and proceed to the discharge of the duties hereby assigned; and shall make a report of their pro-

Harrison.

Clark.

County Boundaries.

ceedings, with a perfect map of their survey, to the boards of county commissioners, of the said counties of Clark and Washington respectively; who shall cause the same to be recorded, in the recorders' offices of their respective counties.

SEC. 17. That all the territory included within the following boundaries, shall form and constitute the county of Scott, to wit: Beginning at the south-east corner of section thirteen, in town two north, of range eight east, of the second principal meridian; thence north to the south-east corner of town three; thence on a direct line through the same, to the north-west corner thereof; thence north with the line dividing ranges seven and eight, to the South Fork of the Muscatituck river; thence down the same with the main channel thereof, to a point, from which a line running due south, will touch the south-west corner of section twenty-nine, in town two north, of range six east; thence east two miles, thence south one mile, to the township line dividing one and two; whence east with said line, to the Clark county line; thence north-eastwardly, until it touches the south-west corner of section eighteen, of town two, range seven, thence east to the place of beginning.

SEC. 18. That all the territory included within the following boundaries, shall form and constitute the county of Washington, to wit: Beginning at the south-west corner of Washington section sixteen, in township one south, of range two east, of the second principal meridian; thence due east, to the summit of the Silver-creek knobs; thence north-eastwardly with the extreme height of the same, between the waters of Silver-creek and Blue river, to a point on the line dividing the counties of Clark and Scott, whence a due west line, will strike the south-west corner of section twenty, in township two north, of range six east; thence north, to the Muscatituck river; thence down the same, to a point from which a line drawn due south, would strike the place of beginning, and thence south to the place of beginning.

SEC. 19. That all the district of country within the following boundaries, shall form and constitute the county of Jackson, to wit: Beginning at Big Sand creek, where the Jackson line dividing ranges six and seven, east of the second principal meridian, crosses the same; thence down said creek with the meanders thereof, to its junction with Driftwood Fork of White River; thence down said river with the meanders thereof, to where an east and west line running through the centre of township seven north, strikes the north-west side of the aforesaid river; thence west with the said line, to the north-west corner of section twenty-one, in range two east; thence south with said line, to the north-west corner of section sixteen, in town five north; thence east two miles, to the northeast corner of section

County Boundaries.

number fifteen; thence south with the sectional lines, to the Driftwood Fork of White River; thence up said river, with the meanders thereof, to the mouth of Muscatituck river; thence up the last mentioned river to the forks thereof; thence up the South Fork to where the line dividing ranges six and seven crosses the same, and from thence north with said range line to the place of beginning.

SEC. 20. That all the district of country within the following boundaries, shall form and constitute the county of Bartholomew, to wit: Beginning at the south-west corner of section eighteen, in township seven north, of range four east; thence north to the north-west corner of township ten north, of range four east; thence east with the line dividing townships ten and eleven north, to the north-east corner of township ten, of range seven east; thence south with the range line dividing ranges seven and eight, to the south-east corner of section thirteen, in township eight north, of range seven east; thence west to the range line, dividing ranges six and seven, at the north-west corner of section nineteen, in township eight north, of range seven east; thence south with said range line, to where it intersects Big Sand creek; thence down said creek with the meanders thereof, to its junction with Driftwood river; thence down said river with the meanders thereof, to a point from which, a line due west, passes through the centre of township seven to the place of beginning.

SEC. 21. That all that part of Delaware county, lying east of Monroe county, and west of the county of Bartholomew aforesaid, be and the same is hereby attached to the county of Bartholomew temporarily, for the purpose of exercising jurisdiction only, but is not to be taken into consideration, by the commissioners appointed by this act, to fix the seat of justice of said county in the location thereof.

SEC. 22. That all that part of Delaware county, contained within the following boundaries, shall form and constitute the county of Shelby, to wit: Beginning at the south-east corner of section thirty-three, in township eleven north, of range eight east, of the second principal meridian; thence north twenty-four miles, to the north-east corner of section four, in township fourteen north, of range eight east; thence west seventeen miles, to the north-west corner of section two, in township fourteen north, of range five east; thence south twenty-four miles, to the north boundary of Bartholomew county; thence east seventeen miles to the place of beginning.

SEC. 23. That the territory included within the following boundaries, shall form and constitute the county of Johnson, to wit: Beginning at the south-west corner of section thirty-four, in town eleven north, of range five east, the same being the south-west corner of Shelby county;

Bartholomew

Shelby.

Johnson.

County Boundaries.

thence running north with the line of said county, to the south-east corner of Marion county; thence west to the north-east corner of Morgan county, thence south with the line of said county, to the township line, dividing townships ten and eleven; thence east with said line to the place of beginning. The circuit courts, and all other courts of the said county of Johnson, shall meet and be held at the house of John Smiley, or at any other place the said court shall adjourn to, until suitable accommodations can be provided, at the permanent seat of justice of said county; and so soon as the said courts are satisfied of that fact, they shall adjourn thereto; after which they shall meet and be permanently held at such seat of justice. The board of county commissioners of the said county of Johnson, shall, within twelve months after the permanent seat of justice shall have been selected, proceed to erect the necessary public buildings thereon.

SEC. 24. That all the territory included within the following bounds, shall form and constitute the county of Madison, to wit: Beginning at the south-east corner of section thirty-five, in town fifteen, of range five east, of the second principal meridian; thence east with the township line, dividing towns fourteen and fifteen, to the south-east corner of section thirty-three, in range eight; thence north to the lines dividing towns fifteen and sixteen; thence east to the south-west corner of Henry county; thence north with said county line, to the line dividing townships eighteen and nineteen; thence west to the Hamilton county line; thence south with said line, to the south-east corner of said county; thence west with the line of said last named county, to the north-west corner of section four, in township seventeen, range five east, and thence south to the place of beginning.

SEC. 25. The circuit and other courts of the county of Madison, shall meet and be held at the house of William M'Cartney, until suitable accommodations can be had at the county seat of said county; and so soon as the said courts of said county are satisfied, that suitable accommodations are provided at the county seat of said county, they shall adjourn thereto; after which time, all the courts of said county, shall be held at the seat of justice thereof: Provided however, that the circuit court of said county, shall have authority to remove from the house of said M'Cartney, to any more suitable place in said county, previous to the completion of the public buildings, if they should deem the same expedient; and the board of county commissioners of said county, shall within twelve months after the permanent seat of justice shall have been selected, proceed to erect the necessary public buildings thereon.

SEC. 26. That the territory included within the following boundaries, shall form and constitute the county of

Madison.

Hamilton.

Hamilton, to wit: Beginning on the range line dividing ranges two and three east, of the second principal meridian, at the south-west corner of section seven, in township seventeen, and range three; thence running north on the said range line, to the township line, dividing townships twenty and twenty-one; thence east on the said township line, to the north-east corner of section five, in township twenty, and range six; thence south on the section line, to the south-east corner of section eight, in township seventeen, and range six, and thence west on the section line to the place of beginning.

SEC. 27. That the circuit court in the county of Hamilton shall meet and be holden at the house of William Conner in the said county, until suitable accommodations can be had at the seat of justice; and so soon as the courts of said county are satisfied, that suitable accommodations can be had at the county seat, they shall adjourn their courts thereto; after which time, the courts of the county of Hamilton, shall be holden at the county seat of said county established as the law directs: *Provided always,* that the circuit court shall have authority, to adjourn the court from the house of William Conner as aforesaid, to any other place, previous to the completion of the public buildings, should the said court, or a majority of them, deem it expedient or necessary.

SEC. 28. The board of county commissioners of the said county of Hamilton, shall within twelve months after the permanent seat of justice shall have been selected, proceed to erect the necessary public buildings thereon, pursuant to the directions of the county commissioners of said county.

SEC. 29. That all that part of the county of Delaware, contained in the following bounds, shall form and constitute the county of Marion, to wit: Beginning at the north-east corner of section numbered fifteen, in township seventeen north, of range five east of the second principal meridian line, in the district of lands sold at Brookville; thence south twenty miles to the south-east corner of section twenty-two, in township fourteen north, of range five east; thence west twenty miles, to the south-west corner of section twenty-one, in township fourteen north, of range two east; thence north twenty miles, to the north-west corner of section sixteen, in township seventeen north, of range two east; thence east to the beginning.

Marion.

Square No. 58
seat of justice.

SEC. 30. The square numbered fifty-eight in the town of Indianapolis, is hereby declared to be, and is hereby established, as the seat of justice for said new county of Marion. The circuit and all other courts of the said county of Marion, shall be holden at the house of John Carr, in the town of Indianapolis aforesaid, until a court house, or other house more suitable can be had, and so soon as the circuit

court is satisfied that a more suitable house is provided, they shall adjourn said court thereto; and when a court house shall be provided, the circuit court of said county shall adjourn thereto; after which time, all the courts of said county shall be holden in said court house.

SEC. 31. The sum of eight thousand dollars is hereby appropriated to the construction of a court house, to be paid in three equal instalments, out of the money due the state, for lots heretofore or hereafter to be sold in the town of Indianapolis, as the instalments thereof respectively become due to the state; and it shall be the duty of the agent for the seat of government, to pay the same, to the order of the board of county commissioners of said county, or any part thereof, as the aforesaid instalments shall respectively become due; which shall be applied under the direction of the board of county commissioners of said county, for the purpose of building a court house in the town of Indianapolis, in size, at least fifty feet square, to be built of brick of the best quality, and two stories high, to be completed in a workmanlike manner; which shall be commenced within one year, from the taking effect of this act, and be completed within three years thereafter; and when the said court house shall be completed, it shall be for the use of the general assembly, the supreme and federal courts, until a state house shall be completed at the seat of government: and it is hereby made the duty of the board of county commissioners of said county, to carry the provisions of this section of the act, into complete effect, according to the true intent and meaning thereof.

SEC. 32. Two per centum out of the future sale or sales of lots in the said town of Indianapolis, shall be and the same is hereby reserved for the use of a county library at the seat of justice of said county; and the agent of Indianapolis, shall pay the same over from time to time, to the person or persons who by law may be authorized to receive the same: *Provided however,* that the money appropriated for the building of the state prison at Jeffersonville, shall be first paid.

SEC. 33. That all the territory included within the following boundaries, shall form and constitute the county of Perry, to wit: Beginning on the Ohio river, where the second principal meridian strikes the same; thence north to the north-east corner of section thirteen, town three south, range one west; thence west to the line dividing ranges two and three west; thence south one mile, thence west six miles, thence south with the line dividing ranges three and four west, until it first strikes Anderson's river; thence down the same to the Ohio river, and thence up the Ohio river, to the place of beginning.

SEC. 34. That all the district of country included within

Two per cent.
for county li-
brary.

County Boundaries.

Crawford.

the following boundaries, shall form and constitute the county of Crawford, to wit: Beginning on the Ohio river, at the mouth of Big Blue river; thence up the same, with the meanders thereof, until it strikes the line dividing sections twenty-six and twenty-seven, in township three south, and range two east; thence north with said sectional line, until it strikes Big Blue river; thence up said Big Blue river, with the meanders thereof, until it strikes the line of Harrison and Washington counties; thence west with said line, to the corner of Washington county; thence south, to an east and west sectional line, dividing sections twenty-nine and thirty-two, in township one south, and range two east; thence west with said sectional line, to the line dividing ranges two and three west; thence south with said range line nine miles, to an east and west line, four miles north of the line dividing townships three and four south; thence east with said sectional line, to the meridian line; thence south with the same, to the Ohio river; thence up the same with the meanders thereof, to the mouth of Big Blue river, the place of beginning.

SEC. 35. That all the district of country included within the following boundaries, shall form and constitute the county of Orange, to wit: Beginning at a point on the line dividing ranges two and three west, of the second principal meridian, the centre of town three north; thence with the same due south, to the Crawford county line; thence east with the same to a sectional line, two miles east of the line dividing ranges one and two east; thence due north with the same, to the centre of town three north, thence west to the place of beginning.

SEC. 36. That all that district of country included within the following boundaries, shall form and constitute the county of Lawrence, to wit: Beginning at the line dividing ranges two and three west, at the centre of town three north, and running thence east, to the line dividing the counties of Washington and Orange; thence north to the Driftwood fork of White River, where the line dividing sections four and five, in range two east, and town three north, crosses the same; thence up the same to a point whence a due north line touches the north-east corner of section fifteen, in range two east, and town five north; thence two miles west, to the north-west corner of section sixteen, in the town and range last aforesaid; thence due north, to the line dividing towns six and seven; thence west, to the line dividing ranges two and three west; thence south with the said range line, to the place of beginning.

SEC. 37. That all the territory included within the following boundaries, shall form and constitute the county of Monroe, to wit: Beginning on the line dividing townships six and seven north, where the sectional line dividing sec-

Orange.

Lawrence.

Monroe.

County Boundaries.

tions thirty-two and three, in range two east, of the second principal meridian crosses the same; thence north with said sectional line, to where the same crosses the line, dividing townships ten and eleven north; thence west with said township line, as far as the old Indian boundary line; and thence with said boundary line, in its course north-westwardly, until it strikes the West fork of White River; thence down said river, to where the line dividing ranges two and three west, of the second principal meridian strikes the same; thence south with the said range line, to where it intersects the line dividing townships six and seven north, thence east with said township line to the beginning.

SEC. 38. That all the territory included within the following boundaries, shall form and constitute the county of Morgan, to wit: Beginning on the township line dividing townships ten and eleven north, where the line dividing the ranges two and three east crosses the same; thence west to the centre of range two west, of the second principal meridian; thence north nine miles; thence west three miles, to the line dividing ranges two and three west; thence north eleven miles, to the corners of sections nineteen and thirty; thence east with said line twenty-four miles, to the line dividing ranges two and three east, thence south to the place of beginning.

SEC. 39. That all the territory included within the following bounds, shall form and constitute the county of Warrick, to wit: Beginning on the Ohio river, where the section line passes through the centre of range seven strikes the same; thence north with said line to Little Pigeon creek; thence up said creek with the meanders thereof to the Polk Patch fork; thence up the last named stream, with the meanders thereof, to the line dividing townships four and five south, thence east with said township line, to the line dividing ranges five and six; thence north to the line of Dubois county; thence west with the same to the Gibson county line; thence with the line of Gibson county, to the eastern line of Vanderburgh county; thence south with the same to the Ohio river; and thence with the said river to the place of beginning.

SEC. 40. That all that district of country included within the following boundaries, shall form and constitute the county of Spencer, to wit: Beginning on the Ohio river where the section line passes through the centre of the seventh range strikes the same; thence north with the said section line, until it strikes Little Pigeon creek; thence up said creek with the meanders thereof, to the Polk Patch fork; thence up the Polk Patch fork, with the meanders thereof, to the township line passing between townships four and five south; thence east with said township line, to the range line dividing ranges five and six; thence north to the line

Morgan.

Warrick.

Spencer.

County Boundaries.

of Dubois county; thence east with the line dividing the counties of Perry and Dubois, to the range line, dividing ranges three and four; thence south with said range line, until it first strikes Anderson's river; thence down said river with the meanders thereof, to the Ohio river; thence down the same to the place of beginning.

SEC. 41. That all the territory included within the following boundaries, shall form and constitute the county of Dubois, to wit: Beginning at a point on the bank of the East fork of White River, at which the centre line of range six, shall intersect said fork of White River; thence running south with said centre line, until said centre line intersects the present line, dividing Warrick and Pike counties; thence east with said line, to the line dividing ranges three and four west; thence north with the same three miles; thence east to the line dividing ranges two and three west; thence north with the said line to Lick creek; thence with the meanders thereof, to the East fork of White River; thence down said river to the place of beginning.

SEC. 42. That all the district of country included within the following boundaries, shall form and constitute the county of Martin, to wit: Beginning at the north-east corner of township four north, of range three west, of the second principal meridian; thence south with the range line dividing two and three west, to the north-east corner of section thirteen, in township one north, of range three west; thence west with the section line dividing twelve and thirteen in said township, to the eastern branch of White River; thence down with the meanders of said river, to the sectional line dividing twenty-three and twenty-four, of township one north of range five west; thence north with said sectional line, dividing thirty-five and thirty-six in township two, three and four north, of range five west, to the township line dividing four and five; thence east with said township line, to the place of beginning.

SEC. 43. That all the district of country included within the following boundaries, shall form and constitute the county of Daviess, to wit: Beginning at the forks of White River; thence up the east fork of said river, to the line dividing sections twenty-three and twenty-four, in town one north, range five west, of the second principal meridian; thence north with said sectional line, to the line dividing towns four and five north; thence east one mile to the line dividing ranges four and five west; thence north six miles; thence west with the line dividing towns five and six, to the west branch of White River; and thence down the same to the place of beginning: And that townships five north, of ranges three and four west, of the second principal meridian, be, and the same are hereby attached to the county of Daviess, until otherwise directed by law.

Dubois.

Martin.

Daviess.

County Boundaries.

SEC. 44. That all the district of country included within the following boundaries, shall form and constitute the county of Greene, to wit: Beginning at the north-east corner of Greene township eight north, of range three west, of the second principal meridian; thence south, to the south-east corner of township six north, of range three west; thence west, to the south-west corner of township six north, of range seven west; thence north, to the north-west corner of township eight north, of range seven west; thence east to, and with the south boundary of Owen county, to the place of beginning.

SEC. 45. That all the territory included within the following boundaries, shall form and constitute the county of Owen, to wit: Beginning at the south-east corner of town nine north, of range three west, of the second principal meridian; thence west with the said township line, to the south west corner of town nine north, of range six west: thence north with the line dividing ranges six and seven west, to the centre of town twelve; thence east to the centre of range two west; thence south to the West Branch of White River; thence down the same, to the line dividing ranges two and three west; and thence south with said range line to the place of beginning.

SEC. 46. That all the district of country included within the following boundaries, shall form and constitute the county of Putnam, to wit: Beginning at the centre of town twelve north, on the range line dividing ranges six and seven west, of the second principal meridian; thence east twenty-four miles, to the line dividing ranges two and three west; thence north twenty-seven miles, to the line dividing towns sixteen and seventeen north; thence west eighteen miles to the dividing ranges five and six; thence south eighteen miles to the line dividing towns thirteen and fourteen; thence west six miles; thence south nine miles, to the place of beginning.

SEC. 47. That the territory included within the following boundaries, shall form and constitute the county of Montgomery: Beginning in the centre of range six, on the line dividing towns sixteen and seventeen; thence north six miles; thence west three miles; thence north eighteen miles; thence east twenty-four miles, to the line dividing ranges two and three; thence south to the line dividing towns sixteen and seventeen; thence west to the place of beginning, shall form and constitute a new county, to be known and designated by the name of Montgomery. The county seat for the county of Montgomery, shall be established at Crawfordsville, on the south-west quarter of section thirty-two in town nineteen north, and range four west: *Provided,* That the proprietor or owner of said town or quarter section, shall comply with the following conditions,

to wit: That he shall lay off into town lots, in said quarter section, eighty acres, and on or before the twentieth day of March next, execute a bond to the county commissioners, binding himself to convey by general warranty deed, to the said commissioners and their successors in office, one equal half of said lots, to be sold and conveyed by said commissioners, for the use and benefit of said county; the commissioners and proprietor taking choice about, beginning at the lowest number, and ascending until the whole number shall be divided; and he shall further bind himself to convey to said commissioners, one suitable lot, without the limits of the town plat for a burying ground; one lot for the purpose of erecting a school house thereon; four other lots which are to be disposed of by the commissioners, in the following manner, to wit: any religious society erecting a house for public worship, of a description to be agreed on by the commissioners, shall be entitled to a lot; the first applying and building to have first choice: *Provided however,* that the proprietor shall defray all expenses attending the laying out of said lots.

SEC. 48. That all the territory included within the following bounds, shall form and constitute the county of Pike, to wit: Beginning on White River where the range line dividing ranges nine and ten west strikes the same; thence south with said range line, to the river Patoka; thence up the same, with the meanders thereof, to the line dividing sections four and five, in township two south, of range eight west; thence south with said section line, to the line dividing townships three and four south; thence east with said township line, to the centre line of range six west; thence north with the last mentioned line to the White River; thence down the same, with the meanders thereof, to the place of beginning.

SEC. 49. That all the territory included within the following boundaries, shall form and constitute the county of Vanderburgh, to wit: Beginning on the Ohio river, where the range line dividing ranges eleven and twelve west, strikes the same; thence north with said range line, to the centre of township four south, of Buckingham's base line; thence east through the centre of township four, to the range line dividing ranges nine and ten west; thence south with the said range line, to a line dividing townships five and six south; thence east to the first section line in range nine; thence south with said section line to the Ohio river; thence down the Ohio river, with the meanders thereof, to the place of beginning.

SEC. 50. That all the territory included within the following boundaries, shall form and constitute the county of Posey, to wit: Beginning on the Ohio river, where the range line dividing ranges eleven and twelve, strikes the

Pike.

Vanderburgh.

Posey.

same; thence north with said range line, to the line dividing townships three and four south; thence west six miles, thence north to the north-east corner of section thirty-six, in township three, of range thirteen; thence west to the Wabash river; thence down said river, with the meanders thereof, to its confluence with the Ohio; and thence up the last named river to the place of beginning.

SEC. 51. That all the territory included within the following boundaries, shall form and constitute the county of Gibson, to wit: Beginning at a point on the White River, where the line dividing ranges nine and ten west, strikes the same; thence down the same, to its junction with the Wabash; thence down the said last named river, to the line of Posey county; thence with the line of Posey county, south and east, to the line of Vanderburgh county; thence east with the same, to the line of Warrick county; thence continuing east, with the Warrick county line, to the line dividing sections thirty-two and thirty-three, in town three south, of range eight west, of the second principal meridian; thence north with the said sectional line, to the river Patoka; thence down the same, with the meanders thereof, to the range line dividing ranges nine and ten; and thence with said line north to the place of beginning.

SEC. 52. That the county of Knox, shall be bounded on Knox: the west, by the Wabash river, on the north by the line dividing townships five and six north; on the east by the main channel of the West Branch of White River; and on the south by the main channel of White River to its junction with the Wabash river.

SEC. 53. That all the territory included within the following boundaries, shall form and constitute the county of Sullivan, to wit: Beginning on the Wabash river, where Sullivan: the line dividing towns five and six north, strikes the same; thence east to the line dividing ranges seven and eight, west of the second principal meridian; thence north with said line, to the line dividing towns eight and nine; thence east six miles, thence north six miles, thence west to the Wabash, and down the said river to the place of beginning.

SEC. 54. That all the territory included within the following boundaries, shall form and constitute the county of Vigo, to wit: Beginning at a point on the Wabash river, Vigo: where the line dividing towns nine and ten north strikes the same; thence east to the line dividing ranges six and seven west; thence north with said line, to the line dividing towns thirteen and fourteen; thence west with the same, to the state line, dividing this state from the state of Illinois; thence south with the state line, to the Wabash river; thence down said river to the place of beginning.

SEC. 55. That all the district of country included within the following boundaries, shall form and constitute the

Parke.

County Boundaries.

county of Parke, to wit: Beginning on the Wabash river, on the line dividing towns thirteen and fourteen; thence east to the line dividing ranges five and six; thence north eighteen miles to the line dividing towns sixteen and seventeen; thence west three miles, thence north six miles, thence west to the Wabash, and down the same to the place of beginning. The circuit court of the county of Parke, shall meet and be holden at the house of Samuel Blair, in said county, until suitable accommodations can be had at the seat of justice; and so soon as the courts of said county are satisfied, that suitable accommodations can be had at the county seat, they shall adjourn their courts thereunto; after which time the courts for the county of Parke, shall be holden at the county seat of Parke county, established as the law directs: *Provided however,* that the circuit courts shall have authority to remove the court from the house of Samuel Blair, to any other place, previous to the completion of the public building, should the said court deem it expedient.

SEC. 56. That the district of country included within the following bounds, shall form and constitute the county of Vermillion, to wit: Beginning on the west bank of the Wabash, where the line dividing townships thirteen and fourteen north, crosses the same; thence west to the state line, thence north with the state line, to the line dividing townships nineteen and twenty north, thence east to the main channel of the Wabash river, thence south with the meanders thereof, to the place of beginning.

SEC. 57. That all that part of the New Purchase lately acquired from the Indians, lying east of the second principal meridian, but not included within the limits of any organized county, shall hereafter be known and designated, by the name of the county of Delaware; and the counties contiguous thereto, and east of said meridian, shall have concurrent jurisdiction throughout the same.

SEC. 58. All that part of the said New Purchase, lying west of the second principal meridian, and not included within the limits of any organized county, shall hereafter be known and designated by the name of the county of Wabash; and the counties contiguous thereto, and west of said meridian, shall have concurrent jurisdiction throughout the same.

SEC. 59. The circuit courts, in counties where court houses shall not have been erected, shall be holden for the time being, at the places designated by law, or selected by the court; and the boards of commissioners in such counties, shall with all convenient speed, proceed to the completion of the public buildings.

SEC. 60. That the boundaries of counties, which cross the line of correction, dividing towns sixteen and seventeen north, purporting to run north and south, shall be under-

Delaware.

Wabash.

Courts where holden in new counties.

Boundaries which cross the line of correction.

County Boundaries.

stood to coincide with the same numerical range, and sectional lines, on both sides thereof, and with said line of correction, intervening such range and township lines.

SEC. 61. That in all cases where counties shall be bounded by rivers or lesser streams, the middle of the main channel of such streams, shall be considered as the true boundaries.

CHAPTER XVIII.

An Act for the formation of a New County out of the counties of Randolph and Delaware.

[APPROVED, DECEMBER 17, 1823.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That from and after the first day of April next, all that tract of country which is included within the following boundaries, shall form and constitute a new county, to be known and designated by the name of the county of Allen, to wit: Beginning at a point on the line dividing this state and the state of Ohio, where the township line dividing townships twenty-eight and twenty-nine north, intersects the same; thence north with said state line twenty-four miles; thence west to the line dividing ranges ten and eleven east; thence south to the line dividing townships twenty-eight and twenty-nine north, thence east to the place of beginning.

SEC. 2. The said new county of Allen shall, from and after the first day of April next, enjoy all the rights, privileges and jurisdictions, which to separate and independent counties do and may properly belong and appertain.

SEC. 3. That Lot Bloomfield and Caleb Lewis, of Wayne county, Abijathan Hathaway, of Fayette county, William Conner, of Hamilton county, and James M. Ray, of Marion county, are hereby appointed commissioners, agreeable to the act entitled "An act for the fixing the seats of justice in all counties hereafter to be laid off." The commissioners above named shall convéne at the house of Alexander Ewing in the said county of Allen, on the fourth Monday of May next, and shall immediately proceed to discharge the duties assigned them by law. It is hereby made the duty of the sheriff of Randolph county, to notify the said commissioners, either in person or by written notification, of their appointment, on or before the first day of May next; and the said sheriff of Randolph county shall receive from the said county of Allen, so much as the county commissioners of said county shall deem just and reasonable; who are

County of Allen, its boundaries.

Commissioners.

When & where to meet.

How notified.

County Boundaries.

hereby authorized to allow the same, out of any monies in the county treasury, in the same manner, other monies are paid.

Courts, where held.

SEC. 4. The circuit court of the county of Allen, shall be holden at the house of Alexander Ewing, in said county of Allen: *Provided however,* That the circuit court shall have authority to remove the court from the house of Alexander Ewing to any other place in said county, previous to the public buildings being completed, should the said court deem it expedient; after the completion of which, the courts of the said county of Allen, shall be holden at the court house, at the county seat of said county of Allen.

SEC. 5. The agent who shall be appointed to superintend the sales of lots at the county seat of the county of Allen, shall reserve ten per cent. out of the proceeds thereof, and pay the same over to such person or persons, as may be appointed by law to receive the same, for the use of a county library for said county of Allen, which he shall pay over at such time, or times and place, as may be directed by law.

SEC. 6. The board of county commissioners of the said county of Allen, shall, within twelve months after the permanent seat of justice shall have been selected, proceed to erect the necessary public buildings thereon.

SEC. 7. The same powers, privileges and authorities that are granted to the qualified voters of the county of Dubois, and others named in the act entitled "An act incorporating a county library in the counties therein named," approved, January 28, 1818, to organize, conduct and support a county library, are hereby granted to the qualified voters of the county of Allen; and the same powers and authority therein granted to, and the same duties required of the several officers and person or persons elected by the qualified electors of Dubois county, and other counties therein named, for carrying into effect the provisions of an act entitled "An act incorporating a county library in the county of Dubois and other counties therein named," according to the true intent and meaning thereof, are hereby extended to, and required of the officers and other persons elected by the qualified voters of the county of Allen.

SEC. 8. That all that part of the new purchase lying south of the said county of Allen, and north of the township line, dividing townships twenty-five and twenty-six north, so far west as the line dividing ranges seven and eight east, and also that part of the new purchase, lying north of said county of Allen, including all that territory contained within the line of said county, and the northern boundary of the state, shall be attached to the said county of Allen; and the inhabitants residing within the said bounds, shall enjoy all the rights and privileges that to the citizens of the said county of Allen, shall or may properly

Reservation often pr. cent. for county library.

Public buildings when erected.

Contiguous territory attached for jurisdiction.

County Boundaries.

belong; and that the said county of Allen shall have jurisdiction both civil and criminal, over the territory so attached, in all cases as though the same were a constituent part of the said county of Allen. And the said county of Randolph shall have civil and criminal jurisdiction over all that tract of country west of the said county of Randolph, to the said line dividing ranges seven and eight, and so far north as to where the township line dividing townships twenty-five and twenty-six, intersects the said range line; all the citizens included and residing within the above bounds, are hereby vested with and entitled to all the privileges of citizens of the said county of Randolph.

Territory attached to Randolph.

SEC. 9. That all suits, pleas, plaints, actions, prosecutions and proceedings, heretofore commenced and pending within the limits of the said county of Allen, and the territory so hereby attached to the same as above, shall be prosecuted to final issue, in the same manner as if this act had not been passed. The county commissioners of Allen county, shall, on the Monday succeeding their election, meet at the house of Alexander Ewing, in Fort Wayne, and then and there proceed to do and transact all business whatever that county commissioners could or ought to do and transact, at any regular meeting, pursuant to the laws of this state.

Suits, &c. how disposed of.
This act to take effect and be in force, from and after the first day of March next.

CHAPTER XIX.

An Act for the formation of the County of Hendricks.

[APPROVED, DECEMBER 20, 1823.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That from and after the first day of April next, all that part of the county of Wabash included in the following boundary, viz: Beginning at the south east corner of section twenty, in township fourteen north, of range two east, thence west, twenty miles to the east line of Putnam county, thence north with said line twenty miles, to the north west corner of section eighteen, in township seventeen, in range two west, thence east twenty miles, to the north west corner of Marion county, thence south twenty miles with said county line, to the place of beginning, shall form and constitute a new county, to be known and designated by the name and style of the county of Hendricks. Name.

SEC. 2. The said new county of Hendricks shall, from

and after the first day of April next, enjoy all the rights, privileges, and jurisdiction which to separate and independent counties, do or may properly belong and appertain.

Commissioners.

When and where to meet

How notified.

Courts, when & where held,

Public buildings, when erected.

Attached to Montgomery and Putnam, for the purposes of representation.

SEC. 3. That William Templeton of Lawrence county, William M' Culloch of Monroe county, Calvin Fletcher of Marion county, Abel Cole of Shelby county, and John Smiley of Johnson county, be, and they are hereby appointed commissioners, agreeably to an act entitled "An act for fixing the seats of justice in all new counties hereafter to be laid off." The commissioners above named, shall meet at the house of the late William Ballard in said county of Hendricks, on the second Monday of July next, and shall immediately proceed to discharge the duties assigned them by law. It is hereby made the duty of the sheriff of Morgan county to notify the said commissioners, either in person or by written notification, of their appointment, on or before the first day of June next; and the said sheriff of Morgan county, shall receive from the said county of Hendricks, so much for his services, as the county commissioners, who are hereby authorized to allow the same, shall deem reasonable, to be paid out of any monies in the treasury of said county, in the same manner that all other monies are paid.

SEC. 4. The circuit courts and all other courts of the county of Hendricks, shall meet and be holden at the house of the late William Ballard in said county of Hendricks, until suitable accommodations can be had, at the seat of justice in said county, when they shall adjourn the circuit courts thereto; after which time, all the courts of the county of Hendricks shall be holden at the county seat of Hendricks county established by law. *Provided however,* that the circuit court shall have authority to remove the court from the said house of the late William Ballard to any other place in said county of Hendricks previous to the completion of the public buildings, should the said court deem it expedient.

SEC. 5. The board of commissioners for the said county of Hendricks, shall within twelve months after the seat of justice shall have been selected, proceed to erect the necessary public buildings thereon. They shall also hold a special session on the first Monday in May next, for the purpose of appointing an assessor and transacting such other business as may be necessary.

SEC. 6. The said new county of Hendricks shall form a part of the counties of Montgomery and Putnam, for the purpose of electing senators and representatives to the general assembly, until otherwise directed by law.

SEC. 7. The same powers, privileges and authorities that are granted to the qualified voters of the county of Dubois and other counties named in the act entitled "An act incor-

porating a county library in the counties therein named," approved, January 28, 1818, to organize, conduct and support a county library, are hereby granted to the qualified voters of the county of Hendricks, and the same power and authority therein granted to, and the same duties therein required of the several officers, and the person or persons elected by the qualified voters of Dubois county, and other counties named in the said act, for carrying into effect the provisions of the act, entitled "An act incorporating a county library in the county of Dubois, and other counties therein named," according to the true intent and meaning thereof, are hereby extended to, and required of the officers and other persons elected by the qualified voters of the county of Hendricks.

This act to take effect and be in force from and after its passage.

CHAPTER XX.

An Act for the formation of a New County out of the counties of Parke and Wabash.

[APPROVED, JANUARY 2, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That from and after the first day of February next, all that part of the counties of Parke and Wabash, included within the following bounds, shall form and constitute a new county, that is to say: Beginning on the west bank of the Wabash river, where the township line dividing townships numbered thirteen and fourteen north of the base line, of range number nine west of the second principal meridian crosses the same; thence west to the state line; thence north to the line dividing townships numbered nineteen and twenty north; thence east to the Wabash river; and thence south, with the meanders of the said river, to the place of beginning.

SEC. 2. The said new county shall, from and after the first day of February next, be known and designated by the name of the county of Vermillion, and it shall enjoy all the rights, privileges and jurisdictions, which to a separate and independent county, do or may properly belong or appertain: *Provided always,* That all suits, pleas, plaints, actions and proceedings, which may before the first day of March next, have been commenced, instituted and pending within the county of Parke, shall be prosecuted to final judgment and effect in the same manner as if this act had not been passed: *Provided also,* That the state and county

Suits pending,
how disposed
of.

County Boundaries.

Taxes due,
how paid.

Commission-
ers.

When and
where to meet

How notified.

Courts, where
held.

Public build-
ings, when to
be erected.

Ten pr. cent.
reserved for
county libra-
ry.

taxes, which are now due within the bounds of the said new county, shall be collected and paid in the same manner and by the same officers, as they would have been, if the erection of the said new county had not taken place.

SEC. 3. Robert Sturgus and Samuel Caldwell, of the county of Vigo, Moses Robbins of Parke county, William Pugh, of Sullivan county, and William M'Intosh, of the county of Putnam, are hereby appointed commissioners, agreeably to the act entitled "An act for the fixing of seats of justice in all new counties, hereafter to be laid off;" the commissioners above named, or a majority of them, shall convene at the house of James Blair, in the said new county of Vermillion, on the first Monday of March next, and immediately proceed to discharge the duties assigned them by law. It is hereby made the duty of the sheriff of Parke county, to notify the said commissioners, either in person or by written notice of their said appointment, on or before the first day of February next; and the said sheriff of Parke county shall receive, from the said county of Vermillion, such compensation therefor, as the county commissioners of said new county of Vermillion shall deem just and reasonable; who are hereby authorized to allow the same out of any monies in the treasury of said county, not otherwise appropriated, in the same manner other allowances are made.

SEC. 4. The circuit court of the county of Vermillion, shall meet at the house of James Blair, in the said new county of Vermillion, until suitable accommodations can be had at the seat of justice; and so soon as the courts of said county are satisfied, that suitable accommodations can be had at the county seat, they shall adjourn their courts thereto, after which time the courts of the said county shall be holden at the seat of justice of said county established by law: *Provided always,* That the circuit court shall have authority to adjourn the court from the house of James Blair as aforesaid, to any other place, previous to the completion of the public buildings, should the said court or a majority of them deem it expedient.

SEC. 5. The board of county commissioners of the said county of Vermillion, shall, within six months after the permanent seat of justice of said county shall have been selected, proceed to erect the necessary public buildings thereon.

SEC. 6. The agent who shall be appointed for the sales of lots at the seat of justice of said new county, shall reserve and receive ten per centum out of the proceeds of all donations made to the said county, and also out of the proceeds of all sales made of lots at the county seat of said county, and pay the same over to such person or persons as may be appointed by law to receive the same, for the use of a county library for the said county of Vermillion;

County Boundaries.

which he shall pay over at such time and place as may be directed by law.

SEC. 7. The powers, privileges and authorities, that are granted to the qualified voters of the county of Dubois and others named in the act entitled "An act incorporating a county library in the counties therein named," approved, January 28, 1818, to organize, support and conduct a county library, are hereby granted to the qualified voters of the county of Vermillion; and the same powers and authorities therein granted, and the same duties therein required of the several officers and persons elected by the qualified voters of the county of Dubois and others therein named, for the purpose of carrying into effect the provisions of the act aforesaid, according to the true intent and meaning thereof, are hereby granted to and required of the officers and other persons elected by the qualified voters of the county of Vermillion.

SEC. 8. The said county of Vermillion shall have both civil and criminal jurisdiction over all the country north of said county, which is or may be included in ranges nine and ten west, to the northern boundary of the state.

SEC. 9. The said new county of Vermillion shall be attached to the counties of Parke and Vigo, for the purpose of electing representatives to congress, and to the same senatorial and representative districts to which said counties now belong, for the purpose of electing senators and representatives to the general assembly, and to the first return district for the purpose of returning votes for electors of President and Vice-President of the United States.

Attached to
Parke & Vigo.

CHAPTER XXI.

An Act to attach part of the County of Gibson to the County of Pike,
and for other purposes.

[APPROVED, JANUARY 26, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That from and after the first day of March next, all that part of the county of Gibson contained within the following bounds, be and the same is hereby attached to, and shall hereafter form and constitute a part of the county of Pike, to wit: Beginning on White River, where the range line dividing ranges nine and ten strikes the same; thence south with said range line, to the river Patoka; thence up the said last named river, to the present line dividing the said counties of Pike and Gibson; thence north with said

Boundaries.

county line to White River, and thence down the same to the beginning.

Sec. 2. That all that part of Pike county contained within the following bounds, be and the same is hereby attached to, and shall hereafter form and constitute a part of the county of Gibson, to wit: Beginning on the river Patoka, where the present line dividing the counties of Pike and Gibson crosses the same; thence up said river, with the meanders thereof, to the line dividing sections four and five, in township one south, of range eight west; thence south with said section line, to the line dividing the counties of Pike and Warrick; thence west to the present line of Gibson and Pike counties; and thence north to the place of beginning.

Sec. 3. That all suits, pleas, plaints, actions, and proceedings pending in said parts so attached, shall be prosecuted to final effect, in the same manner as if this act had not been passed.

Territory attached to Gibson.

Boundaries.

Term, three years.

County commissioners appoint trustee.

Take oath, & give bond.

CHAPTER XXII.

An Act relating to County Seminaries.

[APPROVED, JANUARY 31, 1824.]

Sec. 1. Be it enacted by the General Assembly of the state of Indiana, That the term of service of trustees of county seminaries, both in appointments heretofore made by the governor, and in those that may be made agreeably to the provisions of this act, shall be limited to three years, and until their successors are appointed and qualified, and no longer unless reappointed.

Sec. 2. The county commissioners in their respective counties, at their first meeting after the passage of this act, or some subsequent meeting, shall appoint some fit person as trustee of the county seminary for their respective counties, in all cases where the term of service of the trustee of such county has expired, agreeably to the first section of this act, who on acceptance of such appointment, shall take an oath of office, faithfully to discharge the duties of his said office according to law, and also give bond payable to the state of Indiana, with two sufficient sureties, in the penal sum of double the amount, as near as may be, of the funds of the county seminary, conditioned for the faithful performance of the duties of his office, and for paying over all monies, and delivering over, all books, bonds and papers, that may be in his hands as trustee, to his successor in office, when his term of service shall have expired, agreeably to this act; which bond shall be filed in the office of the

clerk of the proper county, and shall not be void on one recovery, but may be put in suit from time to time, as often as occasion may require, until the full amount of the penalty aforesaid be recovered.

Sec. 3. It shall be the duty of the trustees of county seminaries annually, to lay before the boards of county commissioners, a complete statement of the situation of the funds, belonging to their respective county seminaries; and on any trustees failing or refusing so to do, such neglect or refusal, may, if believed by said commissioners, for the interest of the county, be considered a vacation of his office; and such trustee may therefor be superseded, and some fit person appointed to fill the vacancy.

Sec. 4. It shall be the duty of every trustee of county seminaries, appointed agreeably to the provisions of this act, to demand of his predecessor, if such there be, all monies, books, papers and bonds, appertaining to his said office; and on failure or refusal of such predecessor, to deliver the same when so demanded, said trustee shall cause suit to be commenced in his own name, as trustee aforesaid, against such delinquent and his sureties, in the circuit court of the proper county, which shall be by motion, having given such delinquent trustee, ten days notice of such intended motion; and such court shall give judgment against such delinquent trustee and his sureties, for the amount of such sum or sums, as may appear to be due to the county seminary, upon which judgment no stay of execution shall be allowed.

Sec. 5. All fines which now are, or may hereafter be directed by law to be paid for the use of a public seminary in each respective county, shall be paid into the hands of the trustee thereof, any law to the contrary thereof, in anywise notwithstanding.

Sec. 6. In all cases where notice and motion may be necessary under the provisions of this act, it shall be and it is hereby made the duty of the prosecuting attorney of the proper county, to attend to and prosecute the said motion, for which he shall be paid by the delinquent, the sum of five dollars, to be taxed with the other fees in the bill of costs.

Sec. 7. The said several trustees shall have and detain in their hands respectively, as a full compensation for their services in receiving and paying out the monies which shall and may come into their hands, three per cent, and no more.

Sec. 8. If any county treasurer, justice of the peace, judge, sheriff, coroner or clerk, in whose hands or possession there may now be, or may hereafter come, any money or monies, in the nature of fines, for the use of a seminary in his proper county, shall neglect or refuse to pay over the

Trustee to demand monies, &c.

Commence suit.

Fines paid to trustee.

Prosecuting attorney, his duties

Trustee, his compensation

Officers neglecting to pay over fines, how dealt with.

same, to the said trustee as herein before provided, he or they shall be subject to impeachment and removal from office.

Clerks & justices
to furnish lists of judgments for fines

SEC. 9. It is hereby made the duty of the clerks of the circuit courts, to furnish the boards of county commissioners, in their respective counties, at their May session annually, a complete list of all judgments rendered for fines the preceding year, in their respective counties; also justices of the peace are hereby required to furnish the board of county commissioners of their respective counties, at their aforesaid session in May annually, complete lists of all judgments rendered by them, for fines the preceding year, the name of the person or persons against whom the same were rendered, and the amount collected on such judgments; which list shall be filed in the clerk's office.

Trustees transmit to the speaker of H. R. a certified list, &c.

Exhibit account of funds to the county commissioners.

Loan monies.

Suit for monies loaned.

SEC. 10. Each and every trustee appointed by virtue of the provisions of this act, shall annually within the first twelve days of the session of the general assembly, transmit to the speaker of the house of representatives, a certified list of all monies by him received, in conformity with the provisions of this act, and shall annually exhibit a detailed account of the seminary funds in their hands, to the county commissioners, on the second day of their November term; and the said county commissioners, after examining all the proceedings of such trustees, shall cause to be entered on their record, their approbation or disapprobation of the official conduct of such trustees, and the clerk of said board, shall forward a copy of the same, to the speaker of the house of representatives, on or before the first Monday of December annually.

SEC. 11. It shall be the duty of the trustees of the public seminaries in the several counties in this state, to loan all monies paid to them, as such, for the term of one year, at the rate of six per centum per annum, taking bond and good freehold security therefor, payable to themselves and their successors in office.

SEC. 12. Should the obligors in such bond, fail or neglect to pay the same, at the time therein specified, the trustees aforesaid, or their successors in office, are hereby empowered to commence suit, and prosecute for the same, in any court having competent jurisdiction, unto final judgment, on which there shall be no stay of execution, and also to foreclose any mortgage, the condition of which may be forfeited by nonpayment of the money for which the same was taken, and to have the lands and tenements thereby mortgaged, sold pursuant to the law; if the same be deemed expedient by such trustee to ensure the payment of the money secured thereby.

SEC. 13. The qualified electors of each county, may at the election on the first Monday in August in any year, and

yearly thereafter, elect from each township in such county, one trustee, and any such trustee, shall, after being qualified, remain in office, until his successor be elected and qualified; and every trustee before he enters upon the duties of his office, shall file bond in the clerk's office of his county, in the penalty of two thousand dollars, with sureties to be approved of by the said clerk, payable to the state of Indiana, conditioned for the faithful performance of the duties of his office, and so soon as a majority of the trustees of any county shall have given bond as aforesaid, said trustees shall be a body corporate, with powers and liabilities, similar to other corporations, and subject to the peculiar object of their organization, and the limitations, restrictions and directions of the general assembly, as from time to time may be enacted; but such incorporation shall not be had, unless it appears from the returns, that a majority of all the voters of such county have voted for trustees.

Township trustees may be elected.

A body corporate.

Majority of all the votes, &c. necessary to elect trustees.

Trustees so elected, their powers and duties.

SEC. 14. Said trustees shall be vested with all the right, title and interest, in, and to the monies, funds, rights, credits and effects of the seminary fund of their county, and shall have right to purchase and hold real and personal estate, for the use of a seminary of learning therein, and to do all acts necessary and proper, for the beneficial exercise of the duties of their office; and to appoint a clerk, treasurer and other officers, being responsible for their conduct.

SEC. 15. When the incorporation of trustees under this act, shall be effected in any county, the trustee of the county seminary of such county, shall deliver over to said trustees, or their order, all books, papers, bonds, bills, notes, monies and effects, belonging to his said trust; and such corporation shall be the successor of said trustee in his powers, and entitled to the rights, credits and effects, belonging to his trust; and in case such trustee shall fail or refuse to make the delivery aforesaid, the said corporation by bill in equity, shall have decree therefor, and for such relief as shall seem meet and consistent with equity, in order to enable them to perform their said trust.

Transfer of monies, books, &c.

SEC. 16. The circuit court of the several counties, shall have jurisdiction in all matters relating to the seminaries thereof; and shall upon the relation of three respectable freeholders thereof, take cognizance of, and enquire into the conduct and management of the funds of said seminaries by said trustees, and pass such orders and decrees, for the preservation and correct disposition thereof, as their discretion shall direct; and enforce said trustees and their sureties to account for, satisfy and pay such damages for the use of said seminaries as shall be just, on account of any wilful, negligent and corrupt waste or misapplication of the funds of said seminaries; and every trustee and his sureties shall be responsible therefor, unless the court determine by

Circuit court, its powers and duties.

their decree, that such trustee was absent, or voted against the act complained of, and ascertained to be a violation of their trust.

Corporations report to the circuit courts.

SEC. 17. Said corporations shall not be bound to account to, or make report of their proceedings, except to the circuit courts of their counties, which shall be whenever required by said courts, and once at least in each year; and such corporations shall be bound to loan the seminary funds, or make use of them in erecting and supporting a seminary, and when loans are made by them they shall be for such rate of interest, and upon such security as is directed in case of the seminary trustee herein before provided.

CHAPTER XXIII.

An Act establishing a County Treasurer.

[APPROVED, JANUARY 31, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That it shall be the duty of the several boards of county commissioners of each county, at their first meeting after the first day of February annually, to appoint some respectable citizen, having the qualifications of an elector, as county treasurer; who shall give bond and security to the satisfaction of the board of county commissioners, conditioned for the faithful discharge of the duties of his office, and to account for all monies which may come into his hands as county treasurer; and that he will deliver unto his successor in office, all books, papers, documents and other things which he may hold by virtue of his office, and pay him the balance of all monies due to the county.

His duties.

SEC. 2. It shall be the duty of the treasurer to receive all monies due and accruing to the county, by or in consequence of this act, or any law or act of this state; to pay and disburse the same on orders drawn by the board of county commissioners of the proper county, or allowances made by the circuit court, attested by their clerk, and not otherwise; the said treasurer shall keep a just and true account of all monies received and disbursed, and hold and keep the same at all times ready for the inspection of said board of county commissioners, and shall at every term of said board, furnish them with a statement thereof, balanced to the first day of said term; shewing all the monies received and disbursed by him since his appointment, or since his last settlement, and the balance remaining in his hands, together with the arrearages of taxes in the hands of the

Commissioners appoint a county treasurer.

collector, and shall moreover, once in every year, settle his accounts with the said board of commissioners, and produce his vouchers, which being allowed, shall be cancelled by them, and retained and filed by the clerk of said board of commissioners. The county treasurer shall be subject to be removed from office, by the commissioners of the respective counties, for neglect or misconduct in office; and in case of the death, removal from office, or removal from the county, of any county treasurer, the commissioners of such county, or any two of them, are hereby authorized and required to appoint some suitable person to fill said office in his place.

SEC. 3. In all cases where any person is desirous of vending any species of merchandize in this state, which is not the product of the United States, it shall be the duty of such person, so wishing to vend any such merchandize, to pay to the county treasurer the tax which may be laid on him by the board of county commissioners, under the provisions of the act for assessing and collecting the revenue, and shall take the treasurer's receipt therefor; which receipt such person shall forthwith file with the clerk of the circuit court, who shall give such person a license thereon accordingly, in the form following to wit:

State of Indiana, County Sct.

A. B. having this day produced to me the county treasurer's receipt, for the sum of _____ he, she or they (as the case may be) is hereby authorized to vend merchandize in this state, for the term of _____ from the day of _____ in the year _____. Which said license shall authorize such person to vend merchandize in such county, for the term therein named and set forth. But if the county commissioners shall not be in session, when such person may wish to commence vending such merchandize, it shall be lawful for such person to give in on oath, the amount of capital to the county treasurer, and pay to such county treasurer the tax thereon, according to the rates laid down in said act, for assessing and collecting the revenue; due respect being had to the time which will have to expire, before the commissioners will sit; and the treasurer shall give such person a receipt, for the amount which may be so paid; which receipt such person shall forthwith deliver to the clerk of the circuit court, and such clerk shall thereupon give to such person, a permit to vend merchandize in such county, until such board of commissioners shall sit, and no longer. And if any person shall by himself, his agent or attorney, vend any such merchandize without a license or permit as aforesaid, such person shall forfeit and pay, upon conviction thereof by indictment in the circuit court, any sum not exceeding one hundred dollars, at the discretion of the jury who may try the same; and it is here-

Vending merchandise, how to obtain license.

Form.

Clerk give permit in certain cases.

Forfeiture for vending without license.

County Treasurer.

by made the special duty of all sheriffs, their deputies, county treasurers, collectors, assessors, justices of the peace and constables, to cause to be recognized to appear at the next circuit court, all who may retail any such merchandise, without having such license or permit, as is provided for in this act.

Clerks keep books, attest orders, &c.

SEC. 4. It shall be the duty of the clerks of the several boards of county commissioners, to keep fair books, wherein shall be kept the accounts of the county, to attest all orders issued by the board of commissioners, for the payment of money, and enter the same in numerical order, in a book to be kept for that purpose, and copy into their said books, the report of the treasurer, of the receipts and disbursements of their respective counties; and whenever the duplicate shall be put into the hands of the sheriff for the collection of county levies, it shall be their duty to send a statement of the sum wherewith he stands charged, to the county treasurer.

Taxes for tavern licenses, paid to co. tr.

SEC. 5. All taxes arising from tavern licenses or otherwise, shall be paid to the county treasurer.

SEC. 6. That so soon as the county treasurer of any county, shall have received from the clerk of the circuit court, a statement of the amount of taxes put into the hands of the sheriff or collector of his county, or of any of his predecessors, and which shall not have been accounted for, it shall be the duty of such county treasurer, forthwith to notify such sheriff or sheriffs, collector or collectors, their executors or administrators (as the case may be) that he will move against him or them, at the next ensuing circuit court, for such delinquencies; which notice shall be as follows:

To A. B. sheriff of _____ county (or late sheriff or security, executor or administrator of A. B. late sheriff or collector, as the case may be) take notice: That I shall on the _____ day of our next circuit court, move for a judgment of said court against you, for failing to pay into the county treasury of said county, the taxes due the said county by you, (or A. B. as the case may be) for the year of _____ (as the case may be) _____ day of _____ C. D. treasurer. Which notice being served ten days previous to the sitting of the court, the court shall proceed to hear and determine the case, and give judgment for whatever sum appears to be due the said county by said sheriff or collector, together with costs; which judgment shall be in the name of the county treasurer, for the use of the county: *Provided however,* That should there appear to be nothing due, on a final hearing of the case, by any such sheriff or sheriffs, collector or collectors, he or they shall nevertheless pay the costs of suit, for failing to settle his or their accounts in due time, according to law.

SEC. 7. The county treasurer shall have for his services,

Treasurer move against defaulting collectors.

Form of notice.

County Treasurer.

one and a half per centum for all monies received, and one and a half per centum for all monies paid out for the county; excepting, however, monies arising from the sales of lots at county seats, in which case he shall receive no more than two per cent. both for receiving and paying out.

SEC. 8. It shall be the duty of the prosecuting attorney of the county, to aid in the proceeding by the county treasurer, against any sheriff, for the nonpayment of the sums of money, which shall be due the county, as is herein before directed.

SEC. 9. County orders properly attested, shall be entitled to a preference as to payment, according to the order of time in which they may be presented; and upon the receipt of money in the treasury, it shall be the duty of the treasurer to appropriate and set apart the same for the discharge of such county orders so presented: *Provided also,* That the county treasurers of each and every county, are hereby required to receive of any collector, all county orders which such collector may have received, or shall hereafter receive in payment of the county tax, without regard to the priority of number of any order or orders.

SEC. 10. Whenever hereafter any person shall exhibit any claim against any county, for services rendered, for which the fund arising from the sale of lots or otherwise at the county seat is specially appropriated, and those funds have been fully expended, it shall be the duty of the board of county commissioners to give such claimant an order on the county treasury for such sum as may be due to such claimant, to be paid out of any monies in the treasury not otherwise appropriated.

SEC. 11. Every collector of county taxes is hereby required to receive any regular attested county order, made by the board of county commissioners, when the same may be tendered to him by any person or persons, in payment or discharge of such person or persons taxes due to such county; and the county treasurer shall be bound to receive any such attested order of any such collector, in discharge of the demand such county may have against any such collector.

SEC. 12. When any person has an attested county order in his own name, of a larger amount than his county tax, and is desirous to appropriate a part of such order to the payment of such tax, he is hereby authorized to apply to the clerk of the board of the county commissioners, whose duty it shall be, to give to the holder of such order, and in exchange therefor, two or more attested county orders, making together the same amount with the original order; one of which orders shall be for the same amount, with that stated by the holder to be the amount of his tax, and shall appear on its face to be intended for the payment thereof.

Compensa-
tion.

Prosecuting
attorney, aid
in proceeding
against col-
lectors.

County or-
ders to be paid
as presented.

Commission-
ers may issue
county orders.

Collectors to
receive coun-
ty orders.

Clerk to give
small orders
in lieu of large
ones.

County orders
to be received
at their nominal
value.

SEC. 13. If any collector of county taxes, shall receive any county order at less than its nominal value, or shall directly or indirectly purchase any such claim at less than its nominal value, he shall be subject to presentment or indictment in any court of competent jurisdiction, and fined for every such offence, in any sum not exceeding five hundred dollars.

SEC. 14. No county commissioner or person doing county business in lieu of such commissioner or commissioners, shall either directly or indirectly purchase or receive in payment, exchange, or in any way whatever, any demand against his county, or any county order for a claim allowed by the board of county commissioners, at any time during the period for which he may be elected, for a less amount than that expressed upon the face of such demand or order against the county.

SEC. 15. Every commissioner in office at the term of the county commissioners court, next to be holden after the publication of this act, shall before the commencement of the session take an additional oath of office, not to violate the provisions of the next preceding section of this act, and every county commissioner hereafter to be elected shall take the oath aforesaid, before entering upon the duties of his said office.

Commissioners take additional oath.

CHAPTER XXIV.

An Act organizing Circuit Courts and defining their Powers and Duties.

[APPROVED, JANUARY 30, 1824.]

State to be divided into circuits.

Seal.

President and associates.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That this state shall, from time to time, be divided into circuits, as circumstances may require, and in each and every county, within each of the said circuits, there shall be a circuit court, which shall be holden at such times and places, as are or may be fixed by law. The said courts so holden in each county, shall be called and styled circuit court, according to the name of the county in which it shall be holden; and shall have a seal, to be devised by the court, who shall cause a description thereof to be recorded.

SEC. 2. Each circuit court shall consist of one president and two associate judges, who shall be elected and commissioned, in the manner provided by the constitution; and who shall, before entering upon the duties of their respective of-

fices, take an oath or affirmation similar to that, which is Oath required to be taken by the judges of the supreme court, a certificate of which oaths shall be endorsed on their respective commissions, and a copy thereof filed; that of the president shall be filed in the office of the secretary of state, and that of the associate judges, in the clerk's office of the county, for which they shall have been elected.

SEC. 3. The clerk of the circuit court before entering upon the duties of his office, shall take an oath or affirmation similar to that which is required to be taken by the clerk of the supreme court, a certificate of which shall be endorsed on his commission, and a copy thereof filed in his office, and shall also give bond payable to the state of Indiana, in the penalty of two thousand five hundred dollars, with two or more sureties to be approved of by the two associate judges of the proper county, conditioned faithfully to discharge the duties of his said office, and seasonably to record all the decrees, judgments and orders of said court, and also to pay over all monies, which shall or may come into his hands, for the payment or in discharge of any judgment, order or decree of said court, to such person or persons, as shall, by law, have a right to demand and receive the same, and to do and perform all other duties, which may be required of him by law. The said bond shall be spread upon the records of the said court, and the original filed among the papers thereof, and shall not be void, on the first recovery, but may be put in suit at the instance and for the benefit of any party injured, from time to time as often as the condition thereof may be broken.

SEC. 4. The circuit courts organized by this act, shall be and the same are hereby made courts of record, and shall have jurisdiction in each and every county throughout the state, in and over all crimes and misdemeanors of every name and description, which shall be committed within their jurisdiction: and shall and may hear and determine the same and give sentence and award execution according to law: and shall moreover have original jurisdiction, in all causes, matters and things at law and in chancery, and shall have full cognizance of all actions real, personal and mixed, in their respective circuits, to issue writs of mandamus, habeas corpus, and all other writs and process necessary to carry these powers into effect, according to the course of the common law, and the usages of courts, not inconsistent with the constitution and laws of this state, and proceed thereon to final determination according to law.

SEC. 5. The said presidents in their respective circuits, and the said associate judges or either of them in their respective counties, shall have full power and authority, either in or out of court, to issue writs of habeas corpus,

Clerk take oath.

Give bond.

Courts of record.

Jurisdiction.

Judges may issue writs of habeas corpus

Ne exeat.

Recognizances made payable to the state of Indiana.

May issue process into other counties, in certain cases.

Persons fleeing from one county into another, how dealt with.

Style of process.

and proceed to trial thereon, and hear and determine the same, according to the rules of the common law, and the usages of courts in such cases. And the said presidents in their respective circuits, or the two associate judges of any of the said courts, in their respective counties, shall have power in vacation to grant writs of *ne exeat*, under such restrictions and regulations, as are or may be prescribed by law. The said presidents and associate judges, or any one of them, shall have full power and authority, both in and out of court to act as conservators of the peace, and to take all manner of recognizances, and obligations which shall be in the name of, and made payable to the state of Indiana; and all recognizances, for any offence or suspicion thereof, or for the peace, good behaviour, or appearance, which shall be taken by the said judges, or either of them out of court, shall be returned to the next circuit court, to be holden in the county, where the same is or may be taken. And the said circuit courts, or any one of them, shall have full power and authority to issue process, into any county in this state, against any person or persons, who may have forfeited, or hereafter may forfeit any such recognizance or obligation, and proceed according to law, to levy and collect the same, and when collected, to order the same to be paid over and disposed of according to law.

SEC. 6. To the end that all persons indicted or outlawed for felonious or other offences in one county, who shall remove into, or dwell in another county, may be brought to justice in the proper county, where the offence was committed, it is hereby directed, that the said courts may issue their writ or writs, or any other legal process, or any one of the judges thereof, in vacation, may issue his warrant or warrants, or any other legal process to all or any of the sheriffs, or other proper officer or officers of said county or counties, to take such person or persons indicted or outlawed. And it shall also be lawful for the said courts to issue subpoenas and other process, into any county in this state, for summoning or bringing any person or persons before them to give evidence, in and upon any matter examinable and triable before them or either of them, under such penalties, as are or hereafter may be provided by law with respect to such process. The said courts shall likewise have power and authority, as often as necessity may require, to issue commissions for the examination of witnesses, agreeably to the regulations, which are or may hereafter be established by law.

SEC. 7. All writs and process, issuing from and out of said courts, shall run in the name of the state of Indiana, and bear test in the name of the clerk, who issued the same, be dated the time they issue, and made returnable according to law.

Sec. 8. There shall be no discontinuance of any suit, process, matter, or thing, returnable to or pending in any of the said courts, although a quorum of judges shall fail to attend, at the commencement or any other day of the term, but if such number shall not attend, as shall, under the provisions of the constitution, be authorized to hold a court, any judge of said court or the sheriff, attending the same, may adjourn the said court for two days successively, and if a quorum shall not attend on the third day, or having attended one day, shall fail to attend on a subsequent day of the term, the court shall stand adjourned until court in course.

Judges failing to attend, court continued till court in course.

SEC. 9. It shall be the duty of the said circuit courts, in the several counties throughout this state, to appoint some person legally authorized to practice as an attorney and counsellor at law, as prosecuting attorney in each county; who shall hold his office during good behaviour, to be adjudged of by the court, and who shall receive for his services, in addition to the fees allowed by law, such compensation, as the judges of the said court, in their discretion may allow, to be certified by the court and paid out of the county treasury on the order of the commissioners.

SEC. 10. From and after the second Monday in August next, there shall be, in each judicial circuit in this state, a circuit prosecuting attorney, who shall be appointed by the governor of the state, who shall hold his office for one year from the date of his appointment, whose duty it shall be to prosecute all pleas, plaints, indictments, presentments, and suits of every description, on the part of the state, within his circuit, for which purpose he shall attend at the regular terms of all the circuit courts within his circuit, and discharge the several duties heretofore incumbent on the attorneys prosecuting for the state, in each county, and it shall further be his duty to prosecute all delinquent sheriffs and collectors of revenue and all other persons, who now are or hereafter may be indebted to the state, or to any of the counties within his circuit, any thing in the ninth section of this act, to the contrary notwithstanding.

SEC. 11. The said circuit prosecuting attorney, before he enters on the duties of his office, shall take an oath to be Oath administered by the president judge, faithfully to discharge the duties of his office, and shall moreover execute a bond Bond with security, to be approved by the president judge aforesaid, in the penalty of ten thousand dollars, payable to the state, and conditioned for the faithful performance of his duty, as prescribed by law, and for the prompt payment of all sums of money that may come to his hands, by virtue of his office, to the person or persons authorized to receive the same, which oath and bond it shall be the duty of the said president judge to administer and receive. And it shall

Prosecuting attorney to be appointed by the court.

Circuit prosecuting attorney, how appointed.

His duties.

further be his duty to forward such bond to the office of the secretary of state, which bond shall be there filed and suit brought on the same for defalcation and delinquency, as in case of other civil officers.

SEC. 12. The prosecuting attorney, appointed as aforesaid, shall receive as a compensation for his services, an annual salary of two hundred and fifty dollars, payable quarterly at the state treasury. In all cases where said prosecutor shall be absent at the empanelling of a grand jury at any of the regular terms of a circuit court, it shall be the duty of the court to appoint a prosecutor pro tem. who shall take the same oath of office, as is required of the regular prosecutor, and perform all his duties during such absence; for which services the court shall allow such compensation as they may judge reasonable, which allowance shall be certified by the president judge, and paid out of the state treasury on the certificate aforesaid: *Provided*, That all payments so made, shall be deducted from the annual salary, by this act allowed to the regular prosecuting attorney.

SEC. 13. In all judgments on criminal prosecutions against any defendant or defendants, the sum of five dollars shall be taxed in the bill of costs, in favor of the prosecuting attorney, which said sum it shall be the duty of the sheriff or other officer collecting said executions, when collected to pay over to the prosecuting attorney aforesaid.

Docket fee.

Prosecutor
pro tem. may
be appointed
by the court.
His compen-
sation.

Salary.

CHAPTER XXV.

An Act organizing the Supreme Court and defining its Powers and Duties.

[APPROVED, JANUARY 2, 1824.]

Supreme
court to con-
sist of three
judges.
Court of re-
cord.

Oath of the
judges.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the supreme court shall consist of three judges, any two of whom shall be competent to hold a court, who shall be commissioned by the governor; which court shall be a court of record to all intents and purposes.

SEC. 2. Every person so commissioned, before he enters upon the duties of his office, shall take an oath or affirmation, which shall be administered by any person legally authorized to administer oaths, in the following form, to wit: "You do solemnly swear (or affirm as the case may be,) that you will support the constitution of the United States, and the constitution of the state of Indiana, and that you will, to the best of your ability and judgment, faithfully discharge the duties of your office, as a judge of the supreme court of the state of Indiana, and that you have not since the

first day of January, eighteen hundred and nineteen, either directly or indirectly, knowingly given, accepted or carried a challenge, to any person in or out of the state, to fight in single combat, with any deadly weapon; and that you will not knowingly give, accept or carry a challenge to any person or persons, to fight with any deadly weapon, in single combat, either in or out of this state, during your continuance in office." And each person, so commissioned and sworn, shall have a certificate of having taken said oath, endorsed on the back of his commission, by the person administering the same, and a similar certificate filed in the office of the clerk of the said supreme court, and also in the office of the secretary of state.

SEC. 3. The said court shall be held in the court house at the seat of government on the first Monday in May and November in each and every year: The term commencing on the first Monday in May, shall be called the May term; and the term commencing on the first Monday in November shall be called the November term. Each term shall continue thirty days, unless the business before the court shall be sooner disposed of, and may be continued beyond that time, should the judges deem it necessary.

SEC. 4. The supreme court shall appoint its own clerk, who, before he enters on the duties of his office, shall take an oath of office, similar to that which is prescribed in the second section of this act, which oath shall be administered by one of the judges of said court; and shall also give bond to the governor for the time being and his successors in office, in the penalty of five thousand dollars, with at least two sureties to be approved of by the said court, conditioned for the faithful discharge of the duties of his office, which bond shall be recorded in the said court and filed in the office of the secretary of state, and shall not be void on the first recovery, but may be put in suit from time to time, at the instance and for the benefit of any party injured, until the whole penalty shall be recovered thereon.

SEC. 5. The supreme court shall annually appoint one of the judges thereof, to inspect the clerk's office of said court, and to report to the next term of said court, the condition in which he found the records and papers, which report shall be recorded.

SEC. 6. The sheriff of the county in which the supreme court shall be held, shall be an officer of the said court, and shall attend the same with a sufficient number of deputies accordingly; and the said sheriff and his deputies, shall be bound to perform the same duties in relation to the business of the supreme court, as they are or may be required by law to perform in relation to the circuit courts. And in all cases where the sheriff or his deputy, attending the supreme court, shall be interested, or shall not be an indiffer-

Certificate of,
endorsed on
commission.

Court when &
where held.

Term may
continue thir-
ty days.

Clerk, how
appointed.

Take oath.

Give bond.

Clerk's office
to be inspect-
ed.

Sheriff.

His duties.

All sheriffs shall serve process to them directed by the supreme court.

Appellate jurisdiction of the court.

Clerk of circuits to deliver papers and records in certain cases, to be transmitted to the supreme court.

Judges failing to attend, court to be adjourned till court in course.

ent person, the duty of such sheriff shall be performed by such disinterested or indifferent person as the said court shall appoint for that purpose. It shall also be the duty of each and every sheriff within their respective counties, to serve, execute and return all process, writs of execution, and all other writs to them directed from the supreme court, in like manner, as they are empowered to serve or execute writs and process issued by the circuit courts within their respective counties; and the said sheriffs, in performing the duties aforesaid, shall act as the deputies of the sheriff of the supreme court, and they and their securities be liable for any nonfeasance, misfeasance or malfeasance in their said office, to the sheriff aforesaid.

SEC. 7. The supreme court shall have appellate jurisdiction in all cases, both in law and equity, coextensive with the limits of the state; except that no appeal shall be allowed from any inferior court to the supreme court, in any criminal case, nor shall a writ of error operate as a supersedeas, in any criminal case. Also all cases in chancery now pending and undetermined, or which may hereafter arise, in any of the circuit courts of this state, in which the president of such court is, or may be interested or prejudiced, by having been a party or counsellor, are hereby transferred to the supreme court, to be there determined, in the same manner, as if the same had been originally commenced in said court; and in all such cases, the supreme court shall have original jurisdiction. And it shall be the duty of the clerk of the circuit court, in which any such case is, or may be pending, upon the application of either party, to deliver over the papers on file in said case in his office, together with a complete record of the proceedings, so far as they have been had in the said cause, in order that the same may be transmitted to the clerk of the supreme court, to be by him docketed in the same manner as other causes; provided, the party so applying give bond in such sum as either of the associate judges of the said court shall deem sufficient, payable to the opposite party, for the safe transmission of the said papers.

SEC. 8. There shall be no discontinuance of any suit, process, matter or thing returnable to, or depending in the supreme court, although a sufficient number of judges shall fail to attend at the commencement, or any other day of the term; but if a majority of them shall not attend, any judge of said court or sheriff attending the same, may adjourn the said court from day to day for ten days successively; and if a quorum shall not attend on the eleventh, or having attended one day, shall fail to attend a subsequent day of the term, the court shall stand adjourned until court in course.

SEC. 9. Executions to be issued from the supreme court

shall be the same as those which are or may be, by law directed to be issued from the circuit courts; and the supreme court shall have power to direct all other writs, process, summonses, forms and modes of proceedings to be issued, observed and used by the said court, and shall make rules for that purpose, which shall be entered upon the records thereof, not inconsistent with the constitution and laws of this state.

SEC. 10. Writs of error issuing from, and appeals made to the supreme court, shall extend to all judgments and decrees given by any of the inferior courts of record, except such judgments, as have been or may be rendered by any of the inferior courts, confirming or reversing the judgment of any justice of the peace; on which judgments, no appeal or writ of error shall be allowed. Every appeal shall be prayed at the term of rendering the judgment, or decree appealed from; and the person appealing shall, by himself or some responsible person in his behalf, in the office of the clerk of the court, from whence the appeal is prayed, give bond and sufficient security to be approved of by the said court, and within a time to be fixed by the court, to the appellee for the due prosecution of his appeal; and the penalty of the said bond shall be in a reasonable sum in the discretion of the court.

SEC. 11. In all appeals and writs of error, the transcript of the record, shall be transmitted by the plaintiff in error, or appellant, to the clerk of the supreme court, within sixty days at most, from the time of taking such appeal, or suing out such writ of error, and shall not be thereafter received, unless for good cause shewn, further time be given by the court; and it shall be the duty of the clerk of the supreme court, whenever any appellant shall fail to file his appeal, agreeably to the requisitions of this section, to make out and deliver to the appellee a certificate of such failure, which certificate, when presented to the clerk of the court below, shall be sufficient authority for execution and other proceedings in the case, as if no appeal had been granted. The appellee or defendant in error may demand a trial at the term to which the appeal or writ of error is made returnable, and the court shall not continue the same to another term, without the consent of the appellee or defendant in error, unless upon good and sufficient cause.

No pleadings shall be required on writs of error, except an assignment of errors to be filed by the plaintiff on or before the first day of the term, to which the writ of error is returnable, and an answer thereto, by the defendant to be made at such time as the court shall direct; but the causes shall stand for trial, at the term to which the writs may be returned.

Executions
same as those
of circ't court.
Other process.
Rules.

Writs of error
and appeals.

Appeal, when
prayed for.

Appellant
give bond.

Transcript to
be transmit-
ted by plain-
tiff in error, in
sixty days.

When appellee
may de-
mand trial.

No pleadings
except assign-
ment of errors.

Writs of error,
when to operate
as a supersedeas.

SEC. 12. No writ of error shall operate as a supersedeas, unless the supreme court, or some judge thereof in vacation, after inspecting the errors, which shall be assigned upon the transcript of the record, shall order the same to be made a supersedeas; and in such case, the clerk issuing the said writ, shall endorse thereon, that it shall be a supersedeas, and shall be obeyed accordingly. It shall also be necessary before a writ of error shall operate as a supersedeas, that bond to be approved of by the clerk of the supreme court be given, in like manner, and with the same conditions and under the same penalties, as is provided in case of appeals; or that bond be given in like manner in the office of the clerk of the court below, subject to such regulations and conditions, as the supreme court or any judge thereof may prescribe and direct. Writs of error shall be issued as a matter of right, on demand of any person applying for the same: and the clerk of the supreme court, at the time of issuing a writ of error, shall issue a summons directed to the sheriff of the county in which such defendant in error shall reside, requiring him to summon said defendant to appear, on the first day of the next term of the said court, to answer such error or errors. And if the summons shall appear, by the return of the sheriff or other officer, to have been served ten days before the return day thereof, the same shall stand for trial agreeably to the provisions of the eleventh section of this act. If the summons shall be returned not executed, or if by any other satisfactory proof, it shall appear to the court, that such defendant or defendants is or are not an inhabitant or inhabitants of this state, the said court may order, that notice of the pendency of such writ of error be published in some one of the public newspapers, for three weeks successively; after which the same shall be proceeded upon in all respects, as if process had been returned executed.

Notice of pen-
dency, &c.
when necessar-
ily.

Plaintiff may
assign errors
on the trans-
cript, &c.

SEC. 13. When the plaintiff in error shall obtain a transcript of the record from the clerk of the inferior court, certified by such clerk, as being a full and complete transcript of the record in the suit or action named, and sealed with the judicial seal of the said court, it shall be lawful for such plaintiff to assign upon the said transcript, all the errors upon which he intends to rely, in order to reverse the said judgment or decree, and file the same with the clerk of the supreme court, who shall receive the same and endorse upon it, when filed: and in such case it shall not be necessary for the said clerk to issue a writ of error to the court below, but he shall issue a summons to the defendant or defendants in error, in the same manner, as if a writ of error had issued, and the supreme court shall proceed in all respects to determine the same accordingly.

SEC. 14. The plaintiff in error, except in cases of wills,

shall assign errors upon matters of law only, arising upon Errors in law the face of the proceedings. In cases of wills, the plaintiff and fact, when in error may assign errors upon matters of fact, as well as upon matters of law, to be determined by the court. If the judgment or decree be affirmed in the whole, the appellant *Damages on affirmance.* shall pay to the appellee, a sum not exceeding ten per centum, at the discretion of the court, on the sum due thereby, besides the costs on the original suit and appeal. If the judgment or decree be reversed in the whole, the appellee *On reversal.* shall pay to the appellant such costs as the court in their discretion shall award. If the judgment or decree be reversed in part, and affirmed in part, the costs of the original suit and appeal shall be apportioned between the appellant and appellee, in the discretion of the court. In case of a partial reversal, the supreme court shall give such judgment or decree as the inferior court ought to have given; on appeals and writs of error, it shall be lawful for the supreme court to issue execution, or remand the cause to the inferior court, in order that an execution may be there issued, or that other proceedings may be had thereon. When any judgment or decree shall be reversed on account of any error, which shall or may have taken place in the progress of the cause in the court below, the supreme court shall not reverse the proceedings any further than to include the first error which shall have been committed; and the cause shall be remanded to the court from whence it came, together with the opinion of the supreme court, and with instructions to the inferior court to commence from the last regular proceedings had thereon, and proceed to trial and judgment in the same manner as if no proceedings had been had in the superior court, taking the opinion of the supreme court as their guide: and in such cases, the party having committed the first error shall pay to the opposite party, such costs as the court shall order. When any writ of error shall have been made a supersedeas, and the judgment or decree so superseded shall be affirmed in part or in whole, the defendant in error shall be entitled to the same damages, which is allowed by this act, in case of appeals.

SEC. 15. No writ of error shall be brought after the expiration of five years from the rendition of the judgment or decree complained of, unless the plaintiff in error shall have been, at the time when such judgment or decree was made, an infant, feme covert, non compos mentis, imprisoned, or out of the limits of the United States on public business, in which case, the five years shall be computed from the time when such disability ceased.

SEC. 16. No judgment, after the verdict of twelve men, shall be stayed or reversed, where it shall appear to the court, that the merits of the case have been fairly and fully decided by such verdict, and that such verdict and the Judgment on the merits, neither stayed nor reversed after verdict.

Court may is-
sue execution
or remand the
cause.

Proceedings
reversed to
first error.
Cause re-
manded, &c.

Costs.

ment thereon, might be effectually pleaded in bar to another action brought for the same cause. But nothing herein contained shall be construed to extend to, or cure any errors in the judgment of the court, in questions of law, which may have been brought up before the court by the pleadings or otherwise if they appear upon the record. Whenever on hearing an appeal or writ of error, the supreme court shall be divided in opinion, the suit shall be continued until the next term, and if then the court are still divided, the judgment or decree of the inferior court shall be affirmed.

SEC. 17. The clerk of the supreme court shall carefully preserve the transcripts of records certified to his court, with the bonds for prosecution, and all papers relative to them, and other cases depending in said court, docketing them, in the order in which he may receive them, that they may be heard in the same order, unless the court, for good cause to them shewn, may direct any to be heard out of its turn. The proceedings of every day, during a term, shall be drawn up at full length, by the clerk against the next sitting of the court, and such corrections as may be necessary, being first made therein, shall be signed by the presiding judge. When any cause shall be finally determined, the clerk shall make a complete record thereof. All writs and summonses, issuing from the supreme court, shall bear test, in the name of the clerk, who issued the same, and shall be dated when they issued.

Power of the court.

SEC. 18. The supreme court shall have power to impose and administer all necessary oaths, and affirmations, to punish by fine and imprisonment all contempts of authority in any cause, on examination before them, and to establish all necessary rules for that purpose, or any other, in conformity to the laws and constitution of this state, not otherwise provided for by law.

SEC. 19. Witnesses shall be summoned in the same manner, have the same privileges, and be subject to the same penalties, which are or may be prescribed by law, respecting those summoned to attend the circuit courts. Jurors may be summoned whenever required, in such manner as the court shall direct, and shall be liable to the same fines and penalties, which are, or may be by law inflicted on those summoned to, and attending on the circuit courts.

SEC. 20. For good cause shewn, the supreme court, or any judge thereof in vacation, may grant commissions for the examination of witnesses; and the clerk of the said court, where any witness shall be about to depart from the state, or shall by age, sickness or otherwise, be unable to attend the court, or when the claim or defence of any party, or a material part thereof, shall depend on a single witness, may, on affidavit made and filed, issue a commission for taking the deposition of such person *de bene esse*, to be read at the

Witnesses and jurors, how summoned.

Depositions.

trial, in case the witness shall be out of the jurisdiction of the court, or unable to attend. But the party obtaining such commission, shall give reasonable notice to the opposite party of the time and place of taking such deposition.

SEC. 21. In the supreme court, the parties may manage their own causes personally, or by their attorneys in fact properly authorized for that purpose, or by such attorneys at law, as by the rules of said court, may be permitted to manage causes therein.

SEC. 22. The supreme court shall have a seal, to be de-

vised by the judges thereof, and the description of the same in writing shall be deposited and recorded in the office of the secretary of state, and remain a public record. The opinions and determinations of the said court shall be in writing, except in cases and on subjects of an unimportant nature, which opinions and determinations shall be recorded by the clerk, in a book kept for that purpose.

Parties may appear in person or by attorneys.

Opinions of the court to be in writing.

in writing.

CHAPTER XXVI.

An Act to regulate the Judicial Circuits, and fixing the times of holding Courts.

[APPROVED, JANUARY 14, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That this state be, and the same is hereby divided into five judicial circuits as follows, to wit: The counties of Orange, Martin, Daviess, Knox, Sullivan, Vigo, Parke, Vermillion, Montgomery, Putnam, Greene and Owen, shall form the first circuit; the counties of Scott, Jefferson, Jennings, Jackson, Monroe, Lawrence, Washington, Harrison, Floyd and Clark, shall form the second circuit; the counties of Allen, Randolph, Wayne, Union, Fayette, Franklin, Dearborn, Switzerland and Ripley, shall form the third circuit; the counties of Dubois, Pike, Gibson, Posey, Vanderburgh, Warrick, Spencer, Perry and Crawford, shall form the fourth circuit; and the counties of Morgan, Johnson, Shelby, Bartholomew, Decatur, Rush, Henry, Madison, Marion, Hamilton and Hendricks, shall form the fifth judicial circuit.

SEC. 2. The circuit courts to be holden in the first circuit, shall be held on the days and times following, to wit: In the county of Orange, on the first Mondays of March and September; in the county of Martin, on the second Mondays of March and September; in the county of Daviess, on the third Mondays of March and September; in the county of

Times of holding courts in the first circuit.

Courts when Holden.

Knox, on the fourth Mondays of March and September; in the county of Sullivan, on the third Mondays of April and October; in the county of Vigo, on the fourth Mondays of April and October; in the county of Parke, on the Thursdays after the courts in Vigo; in the county of Vermillion, on the first Mondays of May and November; in the county of Montgomery, on the Thursdays after the courts in Vermillion; in the county of Putnam, on the second Mondays in May and November; in the county of Owen, on the Thursdays immediately succeeding the courts in Putnam; and in the county of Greene, on the third Mondays of May and November. The circuit courts to be held in the counties of Orange, Martin, Daviess, Sullivan and Vigo, shall each sit six days if the business require it; and the courts to be held in the counties of Putnam, Parke, Vermillion, Montgomery, Greene and Owen, shall each sit three days if the business require it; and the circuit court to be holden in the county of Knox, shall sit twelve days if the business require it.

In the second circuit.

SEC. 3. The circuit courts to be holden in the second circuit, shall be held on the days and times following, to wit: In the county of Scott, on the first Monday in March and second Monday in August; in the county of Jefferson, on the second Monday in March and third Monday in August; in the county of Jennings, on the fourth Monday in March and fifth Monday in August; in the county of Jackson, on the fifth Monday in March and first Monday in September; in the county of Monroe, on the first Monday in April and second Monday in September; in the county of Lawrence, on the second Monday in April and third Monday in September; in the county of Washington, on the third Monday in April and fourth Monday in September; in the county of Harrison, on the second Monday in May and first Monday in October; in the county of Floyd, on the fourth Monday in May and second Monday in October; and in the county of Clark, on the first Monday in June and third Monday in October; and the said courts may sit so long as the business thereof may require, so as not to interfere with the business of the next succeeding court, or the supreme court.

In the third circuit.

SEC. 4. The circuit courts in the third circuit, shall be held on the days following, to wit: In the county of Allen, on the second Mondays of February and August; in the county of Randolph, on the third Mondays of February and August; in the county of Wayne, on the fourth Mondays of February and August; in the county of Union, on the first Mondays of March and September; in the county of Fayette, on the second Mondays of March and September; in the county of Franklin, on the third Mondays of March and September; in the county of Dearborn, on the first Mondays of April and October; in the county of Switzerland, on the third Mondays of April and October; in the county of

Courts when Holden.

Ripley, on the fourth Mondays of April and October. And the said courts to be holden in the counties of Franklin and Dearborn, shall sit twelve days if the business require it; and the circuit courts in the remainder of the counties in said circuit, shall sit six days if the business require it.

SEC. 5. The circuit courts to be held in the fourth circuit, shall be held on the days and times following, to wit: In the county of Dubois, on the second Mondays of February and August; in the county of Pike, on the Thursdays after the courts in Dubois; in the county of Gibson, on the third Mondays of February and August; in the county of Posey, on the fourth Mondays of February and August; in the county of Vanderburgh, on the first Mondays of March and September; in the county of Warrick, on the second Mondays of March and September; in the county of Spencer, on the Thursdays after the courts in Warrick; in the county of Perry, on the third Mondays of March and September; and in the county of Crawford, on the Thursdays after the courts in the county of Perry. And the courts to be held in the counties of Gibson, Posey and Vanderburgh, shall sit each six days if the business require it; and the courts to be held in the remaining counties of said circuit, shall each sit three days if the business require it.

SEC. 6. The circuit courts to be held in the fifth circuit, shall be held on the days and times following, to wit: In the county of Morgan, on the Thursdays next after the second Monday in March and the first Monday of September; in the county of Johnson, on the third Monday in March and second Monday in September; in the county of Shelby, on the Thursdays after the courts in Johnson; in the county of Bartholomew, on the fourth Monday of March and third Monday in September; in the county of Decatur, on the fifth Monday in March and fourth Monday of September; in the county of Rush, on the Thursdays after the courts in Decatur; in the county of Henry, on the first Mondays in April and October; in the county of Marion, on the second Mondays of April and October; in the county of Hamilton, on the third Mondays of April and October; and in the county of Hendricks, on the fourth Mondays of April and October. And the circuit courts so to be held in the counties of Bartholomew and Marion, shall each sit six days if the business thereof shall require it; and the said courts in the remaining counties of said circuit, shall each sit three days if the business require it.

SEC. 7. All writs, subpoenas or other process, which may have issued from any of the said several courts since the last sitting thereof, or which may hereafter issue previous to the publication of this act, shall be deemed and taken, and are hereby made returnable to the first day of the first term of the several circuit courts, to be holden by virtue of

Process re-
turnable.

this act; and all suits, complaints, prosecutions, recognizances, actions, or other proceedings either civil or criminal, which are now pending or may hereafter be pending, prior to the publication of this act, shall be taken up and acted upon at the first term of such court, to be holden under this act, and be disposed of according to law, in the same manner as if no alteration had been made in the time of holding such courts.

This act to take effect and be in force from and after its passage.

Courts in
Hamilton
county, when
holden.
May sit nine
days in Mari-
on.

CHAPTER XXVII.

An Act Supplemental to "An Act to regulate the Judicial Circuits, and fixing the times of holding Courts," passed at the present session.

[APPROVED, JANUARY 14, 1824.]

Be it enacted by the General Assembly of the state of Indiana,
That the circuit courts in the county of Hamilton, shall be holden on the second Thursdays after the commencement of the terms of the Marion circuit court; and the said Marion circuit court may continue its sessions nine days at each term, if the business shall require it; any thing in the act to which this is supplemental; to the contrary, notwithstanding.

Time of hold-
ing courts in
certain coun-
ties.

CHAPTER XXVIII.

An Act supplemental to the act, entitled "An act to regulate the Judicial Circuits, and fixing the times of holding Courts, approved, January 14th, 1824."

[APPROVED, JANUARY 20, 1824.]

Be it enacted by the General Assembly of the state of Indiana,
That the circuit courts of this state, in and for the counties of Parke, Vermillion, Montgomery, Putnam, Owen, Greene, and Madison, shall be holden on the days and times following, to wit: In the county of Parke, on the first Mondays of May and November; in the county of Vermillion, on the Thursdays after the courts in Parke; in the county of Montgomery, on the second Mondays of May and November; in the county of Putnam, on the Thursdays after the courts in Montgomery; in the county of Owen, on the third Mondays of May and November; and in the county of Greene, on the Thursdays after the courts in Owen; and in the coun-

ty of Madison, on the Thursdays after the circuit court in the county of Henry, and at no other times, and shall each sit three days if the business require it; any thing in the act, to which this is a supplement, to the contrary notwithstanding.

This act to take effect and be in force from and after its passage.

CHAPTER XXIX.

An Act relative to Crime and Punishment.

[APPROVED, JANUARY 20, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That every person duly convicted of the crime of treason, shall suffer death.

Treason.

SEC. 2. Every person of sound memory and discretion, who shall unlawfully kill any reasonable creature in being and under the peace of this state, with malice aforethought, and be thereof duly convicted, shall be deemed guilty of murder, and suffer death.

Murder.

SEC. 3. Every person who without malice either express or implied, shall unlawfully kill another person, either voluntarily upon a sudden heat, or involuntarily, but in the commission of some unlawful act, shall be deemed guilty of manslaughter, and upon conviction thereof, be imprisoned at hard labour in the state prison, not less than one, nor more than twenty-one years, and be fined not exceeding one thousand dollars.

Manslaughter

SEC. 4. Every person who shall by night, break and enter into a mansion-house, store-house, out-house, or boat, with intent to commit a felony, shall be deemed guilty of burglary, and upon conviction, be imprisoned at hard labour in the state prison, for not less than one, nor more than fourteen years; and be fined not exceeding one thousand dollars.

Burglary.

SEC. 5. Every person who shall forcibly and feloniously take from the person of another, any money, goods or article of any value, by violence or putting in fear, shall be deemed guilty of robbery, and upon conviction, be imprisoned at hard labour in the state prison, not less than one, nor more than fourteen years, and be fined not exceeding one thousand dollars.

Robbery.

SEC. 6. Every person who shall feloniously steal, take and carry, lead or drive away the personal goods of another, shall be deemed guilty of larceny; and upon conviction, be fined not exceeding double the value of the property

Larceny.

stolen, and be imprisoned at hard labour in the state prison, not less than one, nor more than ten years; and every person who shall buy, or receive stolen goods, knowing the same to be stolen, shall upon conviction, be punished as in this section prescribed for those principally guilty; and every person who shall agree to compound for any stealing, or stolen goods, shall upon conviction, be fined in double the value of such goods.

SEC. 7. Bonds, bills, notes and other instruments of writing, shall be considered as personal goods, of which larceny may be perpetrated.

Witness.

SEC. 8. Any person against whom an offence shall be committed, shall be a competent witness on the trial of an indictment against the person or persons so offending; and all property stolen, shall be restored to the owner, or the value thereof in damages may be recovered in any court of competent jurisdiction.

Assault.

SEC. 9. Every person who shall assault another shall upon conviction before any justice of the peace of the proper county, be fined not exceeding three dollars.

Assault and battery.

SEC. 10. Every person who shall in a rude and angry manner, unlawfully touch, strike, beat or wound any other person, shall be deemed guilty of assault and battery; and upon conviction, he fined not exceeding one thousand dollars, to which may be added, imprisonment not exceeding six months.

Affray.

SEC. 11. If two or more persons, shall by agreement fight in any public place, to the terror of the citizens of this state, the persons so offending, shall be deemed guilty of an affray, and upon conviction be fined, not exceeding twenty dollars, or suffer imprisonment, not exceeding five days.

Unlawful assemblage.

SEC. 12. If three or more persons shall assemble together, to do an unlawful act, and separate without doing or advancing towards it, such persons shall be guilty of an unlawful assemblage, and upon conviction thereof, be fined in any sum not exceeding one hundred dollars.

Rout.

SEC. 13. If three or more persons shall meet to do an unlawful act, upon a common quarrel, and make advances towards it, they shall be guilty of a rout, and upon conviction, be fined not exceeding one hundred dollars each, or be imprisoned, not exceeding sixty days each.

Riot.

SEC. 14. If three or more persons actually do an unlawful act, of violence, either with, or without a common cause or quarrel, or even do a lawful act, in a violent and tumultuous manner, the persons so offending shall be deemed guilty of a riot; and upon conviction be fined not exceeding five hundred dollars each, and imprisoned not exceeding three months each.

SEC. 15. If any person or persons, shall falsely make, deface, destroy, alter, forge or counterfeit, or cause or pro-

cure to be falsely made, defaced, destroyed, altered, forged or counterfeited, or willingly assist in falsely making, defacing, destroying, altering, forging or counterfeiting any record, deed, testament, will, codicil, bond, writing obligatory, bill of exchange, promissory note, for the payment of money or property, bank note, post note, receipt for money or property, power of attorney, any certificate of a justice of the peace or other officer, any auditor's warrant, treasury note, county order, acceptance or endorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory or promissory note, for money or property, with intent to defraud any person or persons, body politic or corporate whatsoever, or shall utter or publish as true, any false, defaced, destroyed, altered, forged or counterfeited record, deed, will, testament, codicil, bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, receipt or acquittance for money or property, power of attorney, any certificate of a justice of the peace or other officer, auditor's warrant, treasury note, county order, commission or pardon, acceptance of bill of exchange, draft or order, endorsement or assignment of any bill of exchange, promissory note for money or property, bond, power of attorney, or writing obligatory, knowing the same to be false, defaced, destroyed, altered, forged or counterfeited, or shall forge or counterfeit any gold or silver coin, which now is or hereafter may be in circulation in this state, or shall utter, pay or tender in payment, any such false, forged or counterfeit coin, any bank note or notes, bill or bills knowing the same to be forged or counterfeit, every person being thereof lawfully convicted, shall be deemed guilty of forgery, and be imprisoned at hard labour, in the state prison not less than one, nor more than fourteen years, and be fined not exceeding one thousand dollars.

SEC. 16. If any person shall knowingly retain in his possession any die or dies, plate or plates, or other apparatus made use of in counterfeiting the current coin of the United States, or in counterfeiting bank notes, such dies, plates, or other apparatus when found, shall be destroyed, and the person so offending, upon conviction thereof, shall be fined not exceeding one thousand dollars, and be imprisoned in the state prison, at hard labour, for a period not less than one, nor more than five years.

SEC. 17. Every person having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter, where by law, an oath or affirmation is required, who shall swear or affirm wilfully, absolutely, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury, or subornation of perjury.

Crimes and Punishments.

perjury as the case may be, and upon conviction, be imprisoned at hard labour in the state prison, for not less than one, nor more than twenty-one years, and be fined not exceeding one thousand dollars, and shall ever after be deemed infamous, and incompetent as a witness or juror, and disqualifed to serve in any office of honour, trust, or profit.

Assault and battery with intent to commit a rape, &c.
SEC. 18. Every person who shall perpetrate an assault, or an assault and battery, with an intent to commit a rape, murder, robbery, or other felony, shall upon conviction, be imprisoned at hard labour in the state prison, for not less than one, or more than fourteen years, and be fined not exceeding one thousand dollars.

Rape.

SEC. 19. Every person who shall unlawfully and forcibly, have carnal knowledge of a woman against her will, or of a woman child under twelve years of age, shall upon conviction thereof, be deemed guilty of rape, and shall be imprisoned in the state prison at hard labour, for a term not exceeding twenty-one years, nor less than five years; and proof of penetration shall be deemed sufficient evidence of the commission of such offence.

Arson.

SEC. 20. Every person who shall wilfully and maliciously burn the dwelling-house, out-house, barn, stable, boat, or watercraft of another, shall be deemed guilty of arson; and upon conviction be fined not exceeding double the value of the property destroyed, and be imprisoned in the state prison at hard labour, for a period not less than one, nor more than ten years; and should the life or lives of any person or persons be lost thereby, such offender shall be deemed guilty of murder, and shall suffer death accordingly.

Kidnapping.

SEC. 21. Every person who shall forcibly steal, take, or arrest any man, woman, or child, in this state, and carry them to another country, state or territory, or aid or abet therein, or who shall forcibly take or arrest, or aid or abet in forcibly taking or arresting any person or persons whatsoever, with a design to take him, her, or them, out of the state, without establishing a claim according to the laws of this state, or of the United States, shall upon conviction be fined, not less than one hundred, nor more than five thousand dollars, and be imprisoned at hard labour in the state prison, not less than one, nor more than fourteen years.

Mayhem.

SEC. 22. Every person who shall violently and unlawfully deprive another of the use of any member of the body, or who shall unlawfully and wilfully disable the tongue or eye, slit or bite the nose, ear, or lip of another, shall be deemed guilty of mayhem, and upon conviction, be fined not less than five, nor more than two thousand dollars; and may be imprisoned in the common jail of the county, not less than twenty days, nor more than six months, at the discretion of the jury who try the case.

SEC. 23. If any person shall on purpose, and of malice

Crimes and Punishments.

aforethought, unlawfully disable the tongue, put out an eye, Injure the slit the nose, cut or bite off the nose, ear or lip, or other tongue, &c. member of any person, with intent to disfigure or disable such person, he or she so offending, shall upon conviction, be imprisoned at hard labour in the state prison, not less than one, nor more than fourteen years, and may be fined not exceeding one thousand dollars.

SEC. 24. If any person shall without proper authority give to another owing service or labour, in any state or territory, a certificate or other testimonial of emancipation, or shall knowingly harbour or employ any person held as a Harboiring slave, who has without the consent of his or her owner slaves, come to this state, or shall encourage any such person to desert, or not to go with his or her owner; or shall use any violence to prevent such owner from recovering a fugitive slave according to law, the person so offending, shall upon conviction, be fined not exceeding five hundred dollars, and be liable for damages to the party injured.

SEC. 25. Every person who shall take upon himself to exercise and officiate in any office, or place of authority in this state, without being thereunto legally authorized, shall be deemed guilty of usurpation, and upon conviction be Usurpation fined not exceeding five hundred dollars.

SEC. 26. If any person being married, shall afterwards marry again, the former husband or wife being alive, and Bigamy. the bond of matrimony still subsisting and undissolved, the person so offending, shall upon conviction, be fined not exceeding one thousand dollars, and may be imprisoned at hard labour in the state prison, for a period not less than one, nor more than three years.

SEC. 27. Every person who shall maliciously or mischievously destroy or injure, or cause to be destroyed or injured, any property of another person, either real, personal or mixed, or any public property, shall upon conviction, be fined not exceeding two fold the value of the property destroyed or the damage done, and be imprisoned not exceeding twelve months. Trespass.

SEC. 28. Every person who shall, without the consent of the near relatives of any deceased person, or without the consent of such deceased being had in his life time, remove any dead body or corpse interred in any public or private Removin the dead. burying ground, shall upon conviction, be fined not exceeding one thousand dollars.

SEC. 29. Every person who shall obstruct the execution Obstructing the execution of process. of any legal process, or shall forcibly free any person or persons from arrest, knowing him, her or them to be under arrest, shall upon conviction, be fined not exceeding ten thousand dollars.

SEC. 30. Every person who shall frequently excite, and stir up quarrels between the citizens of this state, at law or

Barratry.

otherwise, shall be deemed a common barrator, and upon conviction be fined not exceeding five hundred dollars, and be imprisoned not exceeding three months.

Malicious prosecution & conspiracy.

SEC. 31. If any person shall attempt maliciously and without probable cause to indict, or if two or more persons shall conspire to indict an innocent person of felony, falsely and maliciously, the persons so offending, shall on conviction, be imprisoned not exceeding six months, be fined not exceeding one thousand dollars each, and be incapable of voting at any election, and incompetent to give evidence in any case whatever.

Bribery.

SEC. 32. If any judge, or other person concerned in the administration of justice, shall take any undue reward to influence his behaviour in office, he, and each person offering such reward, shall be fined in treble the amount of the same, and be imprisoned in the state prison at hard labour, not less than one, nor more than five years, and forever after, be incapable of holding any office in this state.

Attempt to influence a jury, &c.

SEC. 33. Every person who shall attempt to influence a jury by promises, persuasions, entreaties, money, entertainments or the like, or who being a juror, shall take gain or profit for giving a verdict, shall upon conviction be fined not exceeding five hundred dollars, be imprisoned not exceeding six months, and be incapable thereafter to serve on a jury.

Negligence & oppression of constable, sheriff, &c.

SEC. 34. Any constable, coroner, sheriff, clerk of the circuit court, justice of the peace, or other officer entrusted with the administration of justice, who shall be guilty of manifest and wilful negligence in discharge of official duties, to the injury of any person, or who shall in the administration, and under colour of his office, be guilty of oppression, shall upon conviction, be fined not exceeding one thousand dollars.

Extortion.

SEC. 35. Any officer who shall unlawfully take, by colour of his office, from any person, any money or thing of value that is not due to him, or more than is due, or before it is due, shall upon conviction, be fined tenfold the amount so extorted; and in a prosecution under this section, it shall be sufficient to prove the defendant an officer *de facto*.

Officer suffering prisoner to escape, how punished.

SEC. 36. If any officer whose duty it is to have the custody of prisoners, either on original, mesne or final process, shall negligently suffer any prisoner to escape, he shall be fined in any sum not exceeding ten thousand dollars; and if any such officer shall voluntarily permit any such prisoner to escape or go at large, he shall suffer the same punishment that the person so escaping would have suffered, had he not escaped and been found guilty; and every private person who shall effect the escape of any person lawfully imprisoned, shall suffer the same punishment, that the person so escaping would have suffered, had he not escaped, and been

Aiding in escape.

found guilty; provided that where the escaping person would have been punished with death, the jury who try the offender who permitted, or effected such escape, shall assess such fine as they think proper, and imprisonment at hard labour in the state prison, for not less than one, nor more than seven years.

SEC. 37. If any person shall knowingly and designedly, by any false pretence or pretences whatever, obtain from another, any goods, wares or merchandize, bonds, bills of exchange, bank notes or any securities or orders for the payment of money or transfer of goods, or any valuable thing, with intent to defraud such person of the same, the person so offending shall be fined, not exceeding double the value of the money or property so obtained, and be imprisoned at hard labour in the state prison, not less than one, nor more than seven years.

SEC. 38. If any person with intention of stealing the same, shall alter or deface the mark or brand, of any other person Altering mark or persons horse, mare, gelding, mule, ass, sheep, goat, neat cattle or hog, or shall mark or brand any other persons unmarked horse, mare, gelding, mule, ass, sheep, goat or hog, such person being thereof convicted, shall be fined not exceeding one hundred dollars, and be imprisoned at hard labour in the state prison, not less than one, nor more than three years.

SEC. 39. Every person who shall violently take or keep Trespass possession, of lands and tenements, with menaces, force and arms, and without the authority of law, shall on conviction be fined, not exceeding one thousand dollars.

SEC. 40. Every person who shall sell any unwholesome Unwholesome provisions, for wholesome provisions, knowing the same to provisions. be unwholesome, shall on conviction be fined not exceeding one hundred dollars.

SEC. 41. Every person who shall erect any public nuisance, either to the injury of all or part of the citizens of this state, shall on conviction be fined, not exceeding one hundred dollars; and every person who shall continue any such nuisance, shall be punished in the same manner, as if he had erected the same; and the said nuisance may by order of the circuit court, be removed by the sheriff of the proper county; and any inquest and judgment thereon had, under the provisions of the act entitled "An act allowing and regulating the writ of ad quod damnum," shall be no bar to prosecutions under this section.

SEC. 42. Every person who shall give or accept a challenge to fight a duel, or shall agree to go out of this state, fight a duel, for the purpose of fighting a duel; or shall knowingly carry to another person a challenge for a duel, shall on conviction, be fined not exceeding two thousand dollars, and

Obtaining goods, papers, &c., by false pretences.

Duel.

be imprisoned in the state prison, not less than one, nor more than three years.

SEC. 43. Every person who shall actually fight a duel, shall on conviction, be fined not exceeding five thousand dollars, and be imprisoned not exceeding one year, at the discretion of the court; and should either party in a duel be killed, the survivor shall be deemed guilty of murder, and punished with death.

Information
of.

SEC. 44. Every person having knowledge of another person fighting a duel, or giving, carrying or accepting a challenge to fight a duel, who shall fail to go before some judge or justice of the peace, to give information thereof on oath, shall on conviction, be fined not exceeding five hundred dollars.

Gaming and
betting.

SEC. 45. Every person who shall play at any game or games for money, or other valuable consideration, or shall bet on the hands or sides of such as do play, at a tavern or place licensed to sell spirituous liquors, or in any out house or appendage of the same, shall on conviction, be fined not less than ten, nor more than seventy dollars, and be recognized with sufficient security for his good behaviour for one year; which recognizance shall be forfeited by a second offence within the time aforesaid.

Loser and
winner fined.

SEC. 46. Every person, who by playing or betting at any game or wager whatsoever, shall lose or win any sum of money or article of value, shall on conviction, be fined in double the sum won or lost.

Deceit in
playing.

SEC. 47. If any person by fraud, circumvention, deceit, or evil practice, in playing at cards, dice, or other game, or by sharing in the stakes or wager, shall win or obtain any sum of money or valuable goods whatever, the person so offending, shall on conviction be fined not less than five, nor more than one thousand dollars; and be bound to good behaviour for one year, in such sum and security as the court may deem reasonable.

E O tables.

SEC. 48. Every keeper or exhibiter of either of the gaming tables called A B C or E O tables, billiard tables, or faro bank, or any other gaming table, for the purpose of winning or making money, directly or indirectly, shall on conviction be fined not less than fifty, nor more than one thousand dollars, and be bound to good behaviour for one year, in the sum of one thousand dollars, with sufficient security; which recognizance shall be forfeited by a second offence before the expiration of the year.

Tavern keep-
er permitting
gaming.

SEC. 49. Every tavern keeper, who shall suffer any game or games prohibited by this act, to be played in his tavern or ordinary, or in any out house appendant thereto, shall on conviction be fined not less than fifty, nor more than two hundred dollars, and shall forfeit his tavern license, and

not be relicensed for one year, from the date of such conviction.

SEC. 50. Every person not having a license to keep a tavern, who shall barter or sell by retail, any spirituous liquors, to be drank in his or her house, out house, yard, or garden, or shall sell any spirituous liquors by a less quantity than a quart at a time, shall on conviction be fined not less than two, nor more than twenty dollars.

Retailing
without li-
cense.

SEC. 51. If any tavern keeper shall directly or indirectly ask, demand, or receive any greater price, or higher rates, for any article furnished in the way of business, than is allowed by the county commissioners, in their bill of tavern rates, or shall knowingly neglect for one whole day, to have up in the most public room of the tavern, a fair list of the aforesaid rates, the person so offending, shall be fined not less than five, nor more than fifty dollars.

SEC. 52. If any person shall sign, test, endorse, issue, pass, circulate, or exchange, any due bill, promissory note, or note purporting to be a bank note, or other instrument of writing, for the payment of money or property, or for the performance of any contract, purporting to be the act of any bank, company, secret society, or set of men, other than those, whose names are expressed upon the face of such writing, the person so offending, shall on conviction be fined not more than ten thousand dollars, nor less than ten dollars, and shall be liable to the person aggrieved, to the full amount of such writing; provided this section shall not affect any company or bank, legally chartered, or any mercantile house, for any note, or other instrument of writing on common paper, and in common writing.

Counterfeit-
ing.

SEC. 53. Every person who shall be a party to any bond, bill, deed of sale, gift, grant, or other conveyance, with intent to defraud a creditor or creditors, of any just demand, or to deceive and defeat others, shall upon conviction be fined, not exceeding one hundred dollars, and pay double damages to the party injured; and all bonds, bills, deeds of sale, gifts or grants, or other conveyances made for the purpose aforesaid, shall be null and void: *Provided*, that the discovery of any such fraud made in the answer of any defendant or defendants in a suit in chancery, shall not be used as evidence in any prosecution under the provisions of this act.

Fraudulent
conveyances.

SEC. 54. Every person who shall live in open and notorious adultery or fornication, shall upon conviction, if a male, be fined not exceeding three hundred dollars, and if a female, be imprisoned not exceeding three months.

SEC. 55. Every person who shall be guilty of open and notorious lewdness, or of any grossly scandalous and public indecency, shall upon conviction be fined, not less than ten, nor more than one hundred dollars.

Adultery.

Lewdness.

Cards and obscene books. SEC. 56. If any person shall vend or cause to be vended in this state, any playing cards, or any obscene book, pamphlet, or print, as merchandize, he shall on conviction be fined, not exceeding three dollars, nor less than one dollar for every pack of cards, book, pamphlet, or print aforesaid, so vended as merchandize.

Profanation of the Sabbath. SEC. 57. If any person of the age of fourteen years or upwards, shall be found on the first day of the week, commonly called Sunday, sporting, rioting, quarrelling, hunting, fishing, or at common labour, works of necessity and charity only excepted, such person shall be fined not exceeding three dollars, nor less than one dollar for each offence: *Provided* that nothing herein contained, shall affect such as conscientiously observe the seventh day of the week as the Sabbath, travellers, families removing, keepers of toll bridges attending on the same, or ferrymen acting as such.

Tavern keepers may not sell liquors on Sunday, except &c. SEC. 58. Every tavern keeper, or other person, who shall barter or sell any spirituous liquors on the first day of the week, commonly called Sunday, except to travellers, shall be fined not exceeding three dollars.

Disturbance of religious society. SEC. 59. If any person shall interrupt, molest, or disturb any religious society or member thereof, when meeting or met together for worship, or shall sell or give any spirituous liquors at any booth or open place, in the vicinity of a society met for worship, or shall make any contention or disturbance at any public house, court, election, or other lawful public meeting, such person shall be fined not less than one, nor more than ten dollars.

Profane swearing. SEC. 60. Every person of the age of fourteen years or upwards, who shall profanely curse or damn, or shall profanely swear by the name of God, Jesus Christ, or the Holy Ghost, shall be fined not less than one, nor more than three dollars, for each offence; but the fines imposed on one person in one day, for offending against the provisions of this section, shall not exceed ten dollars.

Playing bullets, running horses, &c. SEC. 61. Every person who shall play bullets, along or across any highway, or in any street of any village or town, or shall run horses, or shoot at a mark within the limits of such town, village or highway, shall be fined not less than one dollar, nor more than three dollars for each offence.

Shows. SEC. 62. Every person who shall exhibit any puppet show, wire dancing or tumbling, for money or reward, shall be fined three dollars for each offence.

Ferrymen, how punished for extortion or negligence. SEC. 63. If any ferryman shall demand or take from any person, a greater sum for the ferriage, than is allowed by the county commissioners, or shall neglect to cause the banks of the river or creek, to be dug sufficiently low or to be kept in good order for the passage of men, horses and loaded wagons, such offender shall on conviction, be fined not exceeding forty dollars.

SEC. 64. Every person other than licensed ferrymen, who shall for fee or reward, set any person over any river or creek, where public ferries are established, within two miles of such ferry, shall be fined three dollars for each offence.

SEC. 65. The punishment of death herein before mentioned, shall in all cases, be inflicted by hanging by the neck, at such time as the court shall direct; not less than fifteen days after the conviction.

SEC. 66. Every person who shall aid, assist, abet, counsel, hire or command any person or persons, to commit any crime or offence in this act mentioned, being thereof duly convicted, shall suffer the same punishment, as that to which the principal offender is subject.

SEC. 67. In indictments for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, and before whom the oath was taken, averring such person or persons to have competent authority to administer the same, together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries are assigned, without setting forth the bill, answer, information, indictment or any part of the record or proceedings, either in law or in equity, other than as aforesaid; and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed.

SEC. 68. In all prosecutions by indictment or presentment, the defendant may plead the general issue, and give in evidence the special matter of justification.

SEC. 69. Persons of skill may be called upon to testify in prosecutions under this act, or in civil cases, whether any note or notes, bill or bills are genuine or otherwise, leaving the credibility of such persons to the jury, but three persons at least, shall be required to testify to the same point in such cases: *Provided however*, that the single testimony of the cashier of the bank, on which such note purports to be, may be received as competent evidence.

SEC. 70. It shall be the duty of the circuit court, when any indictment shall be found as a true bill, to make an order fixing the amount of bail to each offence bailable by law, to be endorsed on the process by the clerk; and the officer who shall serve such process, shall take a recognizance from the defendant, with one or more sufficient securities, in double the sum endorsed as aforesaid, conditioned for the appearance of the defendant or defendants on the first day of the next term of the circuit court, to be helden in such county, to answer to the said indictment, and that he, she or they, will not depart without the leave of said court; which recognizance shall not be set aside or adjudged insufficient for want of form.

Penalty for
ferrying with-
out license,
near a licen-
sed ferry.

Punishment of
death, by
hanging.

Aiding and a-
etting crimi-
nals.

Perjury, how
charged in in-
dictment.

Plea of gene-
ral issue in all
cases.

Cashier and
others, com-
petent witnes-
ses.

Court order
amount of
bail to be en-
dorsed on pro-
cess.

Infamous,
what crimes
so deemed.

Costs,

Prosecutions
by present-
ment or in-
dictment.
Jury find the
extent of fine
and punish-
ment.

Exclusive ju-
risdiction to
justices of the
peace.
Challenge.

Standing
mute.

Limitation.

Limitation.

SEC. 71. Each and every person who may hereafter be duly convicted of the crime of murder, rape, treason, man-stealing, or wilful and corrupt perjury, shall be deemed and considered infamous, and shall forever thereafter be rendered incapable of holding any office of honour, trust or profit, of voting at any election, of serving as a juror, of giving testimony within this state; and no reprieve, release or pardon shall restore such person or persons to the privileges aforesaid.

SEC. 72. Costs of suit shall in all cases of conviction, be included in the judgment, where the jury do not find otherwise.

SEC. 73. All cases of prosecution under this act, where the same is not expressly provided for by statute, shall be by presentment or indictment, and the jury shall find the amount of the fine, and the extent of the punishment or penalties, except where it is otherwise directed, or where the fine, punishment or penalties are fixed absolutely by statute, or where the party or parties plead guilty; in which cases the court shall assess the amount of the fine, and the extent of the punishment and penalties.

SEC. 74. In all offences in this act contained, to which the affixed penalty does not exceed three dollars, exclusive jurisdiction is given to justices of the peace of the proper county.

SEC. 75. In capital cases, each party accused may challenge twenty jurors peremptorily, in cases where the punishment is confinement to hard labour in the state prison, each party accused may challenge ten jurors peremptorily; and in all other cases, each party may challenge three jurors peremptorily, and no more.

SEC. 76. Where the defendant in any prosecution under this act shall stand mute, the court before which the said defendant may be arraigned, shall cause the plea of not guilty to be filed, and proceed to trial, judgment, and execution, in the same manner as if such plea had been filed by the defendant.

SEC. 77. All criminal prosecutions, where the penalty shall not exceed three dollars, shall be commenced within thirty days next after the offence committed, and not after; and all actions for any forfeiture upon any penal statute, the benefit or any part whereof, is or shall be given to any person who shall sue for the same, or to the state or any county, or for the benefit of seminaries, and to any other person who shall prosecute in that behalf, shall be brought within one year next after the offence committed, and not after.

SEC. 78. All indictments which shall hereafter be exhibited for any crime or misdemeanor, (treason, murder, arson, burglary, manstealing, horse stealing, and forgery excepted,) shall be exhibited within two years next after the of-

ference shall be committed, and not after; and if exhibited after the time hereby limited, the same shall be void: *Provided*, That if the person against whom the indictment shall be exhibited, shall not have been an inhabitant, or usually resident within this state, during the said two years, then the same shall, or may be exhibited within two years, during which he shall be an inhabitant or usually resident within this state, after the offence committed.

SEC. 79. It shall be lawful for the defendant or defendants, against whom any fine may have been assessed for the breach of any of the penal laws of this state, to replevy the judgment for the sum, by entering freehold security with the proper clerk or justice of the peace, on the record or docket; which replevy shall operate as a stay of execution, for three months from the date of the judgment; after which, execution may issue against the defendant and his securities: *Provided*, That nothing in this section shall be so construed, as to authorize the court before which any fine may be assessed, to permit the defendant to go at liberty, until the fine which may be assessed shall be replevied.

SEC. 80. Where any person against whom any fine may be assessed, for the breach of any of the penal laws of this state, shall neglect or refuse to pay the amount of the judgment for such fine, or to replevy the same, the court or justice of the peace, as the case may be, may award an execution against the property of the defendant: *Provided however*, That where hereafter, any person may be convicted of any offence, whereby he may be sentenced to pay a fine, if such person fail or refuse to pay such fine, such person so failing or refusing, shall be compelled to work out such fine, on the public roads and highways, within the township where the offence was committed, at the rate of seventy-five cents per day, under the direction of the proper supervisor or supervisors of such public roads or highways; and any person who shall escape from such labour, shall upon re-caption, be compelled to work double the time of service unexpired, when such escape was effected.

SEC. 81. On the conviction of any female, of any of the crimes in this act specified, the punishment whereof is imprisonment at hard labour in the state prison, it shall be lawful for the court or jury who assess the extent of the punishment, to limit the imprisonment to such period, not less than three months, as they may think proper; and such female shall be imprisoned for the period adjudged to her, in the jail of the proper county, and there kept at such labour, as may be suitable, under the direction of the keeper.

SEC. 82. In all cases of surety for the appearance of persons charged with criminal offences before any court, the security or securities of such person, may at any time before judgment is rendered upon the scire facias to shew

Execution,
when to issue.

Fine to be
worked out on
roads and
highways in
certain cases.

Female con-
victed, how
punished.

Securities
may seize and
surrender
principals, at

any time before judgment on scire facias.

cause why execution should not issue, seize and surrender him to the sheriff of the county, wherein the recognizance shall be taken; and it shall be the duty of such sheriff on such surrender, and the delivery to him of a certified copy of the recognizance, by which the security or securities are bound, to take such person into custody, and by writing, acknowledge the surrender aforesaid, and thereupon the security or securities shall be discharged of such recognizance, upon payment of all costs occasioned thereby.

Clerk to certify conviction &c. to be delivered with the convict to the keeper of the state prison.
Sheriff's mileage.

SEC. 33. When any person shall be convicted and sentenced to imprisonment in the state prison, the clerk of the court in which such sentence shall be passed, shall certify a copy thereof, and deliver the same to the sheriff, who when he conveys such convict to the prison, shall deliver the same to the keeper, and receive from the keeper, a certificate of the delivery of such convict; and such sheriff shall be allowed at the rate of twenty cents per mile, for the distance from said prison to the place from which such convict has been conveyed; such distance to be ascertained by a reference to the charges made by the general assembly, for mileage where the same will apply; in other cases from the best information the auditor can procure; but when more than one convict shall be conveyed at a time, eight cents per mile shall be allowed, for conveying each additional convict; and the auditor shall audit such claims, at the rates aforesaid, and the treasurer pay the same out of any money in the treasury not otherwise appropriated.

Sheriff carrying convict to state prison, may demand the assistance of the people.

SEC. 34. While the sheriff is engaged in carrying any convict to the said prison, he shall have the like authority to demand the assistance of any of the people of this state, as if he were acting in his proper county; and all persons shall be aiding and assisting him, under the same penalties.

Convicts at the close of their term, shall pay fine &c. at the rate of fifty cents per day.

SEC. 35. Whenever any person may be convicted of any offence, and sentenced to imprisonment at hard labour in said prison, and also fined as an additional penalty for such offence, and shall not, on or before the expiration of such imprisonment, pay and satisfy such fine, such person shall be detained in said prison at hard labour, until he shall discharge such fine, at the rate of fifty cents per day; and in all cases, any prisoner shall be detained in said prison, at the said sum of fifty cents per day, until the costs which accrued in carrying such person to said prison are paid, unless otherwise paid.

Expense of re-captions, how paid.

SEC. 36. Any prisoner who shall escape from said prison, shall on recaption, be confined to hard labour in the same, for a time, which at the rate of fifty cents per day, would be sufficient to discharge the expense of recaption, in addition to the time for which he was originally confined.

Offences committed previous to the taking effect of this act.

SEC. 37. Where any person previous to the taking effect of this act, shall have been guilty of any offence, to which

the provisions herein contained cannot legally extend, on account of alteration of the definition of crimes, or of the nature of the punishment, such person unless he consent to be tried, and if found guilty, be punished under this act, shall be proceeded against, under the existing laws of the state, at the time the offence was committed. The foreman of each and every grand jury, shall be authorized to administer oaths to all witnesses, who shall appear before such grand jury to give evidence.

SEC. 38. It is hereby made the duty of the respective circuit courts, to give in charge this act to grand jurors.

SEC. 39. That all laws and parts of laws heretofore in force, respecting crimes and punishments, be and the same are hereby repealed.

Courts give this act in charge

CHAPTER XXX.

An Act providing for the collection of certain Debts due the State.

[APPROVED, JANUARY 1, 1817.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the auditor of public accounts and the treasurer of the state, be, and they are hereby authorized and required to examine into the accounts of the former auditors and treasurers of the late territorial government, and of the collectors of the territorial taxes in the different counties of the late territory aforesaid, and ascertain as near as may be, the amounts due from either or any of them, and make out particular statements of the evidence of the claims, and transmit the same to the prosecuting attorneys respectively, of the counties where such delinquents or their securities, or legal representatives, or either of them reside.

SEC. 2. The said prosecuting attorneys of the counties aforesaid respectively, are hereby authorized and required, as soon as they, or any of them receive the statements of the evidence aforesaid, to commence suit in the name of the auditor of the state, against every such delinquent and their securities or legal representatives, for the recovery of the debts, dues and demands aforesaid, in the proper county, and as far as practicable, collect the same, and pay the amounts into the hands of the treasurer of the state, for the use of the state, within sixty days after such public monies may be collected as aforesaid.

SEC. 3. The said auditor and treasurer of the state, whenever it may be thought advisable by the attorney pre-

Duty of auditor and treasurer.

Shall make out statements of claims, &c.

Prosecuting attorney to commence suit.

Descents.

Auditor and treasurer shall attend trial, if advisable.

Their expenses liquidated by the governor.

secuting any such suit as aforesaid, shall attend the trial of any such suit, with the documents of every description in their offices, which in the opinion of the said attorney or of the said auditor or treasurer, may be necessary to support the suit; and the expenses necessarily incurred by those officers in their attendance at the trials aforesaid, together with the reasonable fees to the said attorneys, for their services, shall be liquidated by the governor, and paid out of any monies in the treasury of the state, not otherwise appropriated.

CHAPTER XXXI.

An Act to regulate Descents.

[APPROVED, JANUARY 2, 1817.]

How estates shall descend. Saving right of dower.

For want of children, or their descendants, how estates to descend.

When paternal line shall inherit.

When maternal.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the real and personal estate of any person dying intestate, shall descend to his or her children, or their descendants, in equal parts, viz: to the children of a deceased child, the share of their deceased parent, saving however to the widow in all cases her right of dower.

SEC. 2. If there be no children, nor their descendants, then to the father; and if there be no father, then in equal parts to the mother, brothers, and sisters of such deceased person dying intestate, and to their descendants, or such of them as there be.

SEC. 3. When any person shall die intestate without issue, having a title to any real estate, derived by purchase or by descent from the father, the mother of such person shall not inherit the same nor any part thereof, if there be living any brother or sister of such deceased person, or any brother or sister of his or her father, or any lineal descendant of either of them, except her right of dower which she may have therein.

SEC. 4. When any person shall die intestate having no issue, possessed of a title to any real estate, by purchase or by descent from the mother, the father of such person nor any child he may have by any other woman, except his or her mother, shall inherit the same or any part thereof, if there be living any brother or sister of the mother of such person dying intestate, or any lineal descendant of either of them, saving however to such father the right which he may have as tenant by the courtesy in said estate.

SEC. 5. The real and personal estate of persons dying intestate without issue, having no father, or mother, brothers,

Descents.

or sisters, shall be divided into two equal parts, one of which shall go to the paternal, the other to the maternal kindred, in the following order: first, to the grand-father, if there be any, if not, to the grand-mother, and if there be neither grand-father nor grand-mother, to uncles and aunts on each side and their descendants, or such of them as there be: *Provided however*, the widow of such person dying intestate, having no issue, shall be entitled to all his personal, and half of his real estate, if he has no brothers or sisters, father or mother.

SEC. 6. When for want of issue of the intestate, and of father or mother, brothers or sisters, or their descendants, the estate as before directed, to go in equal parts to the paternal and maternal kindred, shall for the want of such kindred, go to the wife, but should he have no wife, then his estate shall be applied to the support of free schools, in the county in which such property is situated.

SEC. 7. In making dividends of the estate of any person dying intestate, among his or her heirs, any property that any one of them shall have previously received by way of advancement, shall be taken into view, if such person shall apply or claim his or her right of inheritance.

SEC. 8. There shall be no difference made between legitimate and illegitimate children, in the inheriting of property that descends to them through the mother.

SEC. 9. If any man shall marry a woman who has previous to her marriage, borne an illegitimate child or children, and shall acknowledge himself to be the father of such children, they shall be deemed legitimate.

SEC. 10. When any lands shall descend from a person dying intestate to two or more heirs, any one of whom shall be an infant, feme covert, non compos mentis, or a nonresident, and the dividend of each share shall not exceed one hundred dollars in the opinion of the court, it shall be lawful for such court to order the sale of such land, and the distribution of the money arising therefrom, according to the right of each claimant: *Provided always*, that each heir residing in the state, shall be first duly summoned to shew cause, if any he or she hath against such sale; and if any heir shall reside without this state, the court shall make an order for publication, in one or more public newspaper, published in the state; which on being inserted eight weeks successively in such paper or papers as the court may direct, shall be a sufficient summons.

On failure of paternal and maternal kindred, how to descend.
Proviso.

Legitimate & illegitimate children, on same footing.

Illegitimate children recognized, &c.

Regulations concerning heirs non compos, nonresident, &c.

Proviso.

CHAPTER XXXII.

An Act regulating Divorces.

[APPROVED, JANUARY 22, 1824.]

Causes of divorce.

In favour of a husband.

In favour of a wife.

Discretion of the court.

Application.

Proceedings.

Publication.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the several circuit courts within this state, shall be and are hereby invested with power and jurisdiction, to decree divorces in the manner hereinafter mentioned, for the following causes, namely: where either of the parties had a former husband or wife, at the time of solemnizing the second marriage; for impotency or adultery; in favour of a husband, where his wife shall have voluntarily left his bed and board, with the intention of abandonment, for the space of two years, or where she shall have abandoned him, and lived in adultery with another man or men, or shall have been condemned for a felony in any court of record within the United States, or any of the territories thereof; in favour of a wife, where her husband shall have left her, with the intention of abandonment, for the space of two years, or where he shall have abandoned her and lived in adultery with another woman or women, or shall have been condemned for a felony in any court of record within the United States, or any of the territories thereof, or where his treatment to her is extremely barbarous and inhuman; and in all cases, where the court in its discretion, shall deem the granting a divorce just and reasonable; *Provided*, that the associate judges, in the absence of the presiding judges, shall in no case decree or grant divorces.

SEC. 2. That the party desirous of obtaining a divorce, may apply to the circuit court for the county in which such complainant resides, by a libel or petition, specially setting forth the cause of his or her complaint; whereupon the court shall order the defendant to be summoned to appear at the succeeding term of said court, to answer the libel or petition, which summons shall be served on the defendant, together with an attested copy of the said libel or petition, at least fourteen days, before the court to which the summons is made returnable; and if it shall appear by the return of the officer on the summons, or at any stage of the cause, by disinterested affidavit, that the defendant is not a resident of this state, the court shall order notice of the pendency of such complaint, and that the defendant appear, upon the first day of the next court, to answer the said complaint, or the matters and things will be decreed against him in his absence; to be published in some newspaper of this state, for four weeks successively; and the court is hereby invested with all powers, necessa-

ry to the conducting and finally determining such cases, according to the true intent and meaning of this act.

SEC. 3. That upon the appearance of the defendant, he or she, in answer without oath, may by general denial, controvert the allegations of the libel or petition, and may also allege any of the aforesaid causes of divorce to apply to the complainant; or if the defendant fail to appear, the cause shall be set down for trial; but the allegations shall not be considered as confessed, nor proof dispensed with.

SEC. 4. That if on hearing the allegations, there shall appear to be a just cause for divorce, within the provisions of this act, according to the sound construction thereof, the court shall pronounce a decree, declaring the complainant divorced from his or her husband or wife; but such decree shall not operate, so as to release the offending party, unless the court in their discretion, judging from the circumstances of the case, shall decree in favor of the party so offending, a release from the bands of matrimony; but the party so offending, unless released as aforesaid, shall remain subject to all the pains and penalties, the law prescribes against bigamy.

SEC. 5. The courts respectively, pronouncing the decree of divorce, shall regulate and order the division of the estate real and personal, in such way, as to them shall seem just and right; having due regard to each party, and the children if any: *Provided however*, That nothing herein contained shall be so construed, as to authorize the court to compel either of the parties to divest himself or herself of the title to real property.

SEC. 6. Pending a suit for a divorce, the court may make such temporary orders, relative to the property and parties, as they shall deem equitable; and whenever the court think proper, they may compel the husband to disclose on oath, what personal estate he has received in right of his wife; how the same has been disposed of, and what proportion of it remained in his hands, at the time of his divorce; and shall also make use of such kind of process to carry their judgments into effect, as to them shall seem expedient.

Courts shall regulate the division of the estate.

CHAPTER XXXIII.

An Act for the assignment of Dower.

[APPROVED, JANUARY 7, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the widow of any person dying intestate or otherwise, shall be endowed of one full and equal third, &c.

part of all the lands, tenements and hereditaments, either legal or equitable, whereof her husband or any other person to his use, was seized at any time during the coverture; and the dower of such widow shall not be considered as sold or extinguished, by a sale of her husband's property, by virtue of any decree, execution or mortgage.

Continue in mansion house until the assignment of dower

Heir neglecting to assign dower, court may appoint commissioners for that purpose.

SEC. 2. That until such dower shall be assigned, it shall be lawful for her to remain and continue in the mansion house and the messuage thereunto belonging, without being chargeable to pay the heir any rent for the same.

SEC. 3. That if the heir or other person having the next immediate estate of freehold or inheritance, shall not within one month next after demand made, assign and set over to the widow of the deceased, her dower as aforesaid, to her satisfaction, and according to the true intendment of law, or if such heir or other person shall not reside within the county, where the major part of the real estate of said decedent lies, it shall be lawful for such widow to advertise for three weeks successively in some public newspaper printed in said county, and if none be printed therein, then in the county nearest thereto in which a paper shall be published, at least twenty days previous to the first day of the next term of the circuit court to be holden for said county, that application will be made to said court to appoint commissioners to assign and set over to such widow, her dower as aforesaid; upon proof of which notice, it shall be the duty of said court, to appoint three persons as commissioners, resident in the county, disinterested and not allied to the parties, to assign and set over to such widow, her just third part of, and in all the lands, tenements and hereditaments, either legally or equitably belonging to her deceased husband.

Commissioners to assign dower.

Make return.

Widow neglecting to apply for her dower, the heir may have the same assigned.

SEC. 4. The said commissioners shall at some convenient time after such appointment, proceed to assign and set off the said dower, having first taken an oath or affirmation before some person duly authorized to administer oaths, faithfully and impartially to discharge their duties; and after the same shall be so assigned and set off by the said commissioners or a majority of them, they shall make a return thereof under their hands and seals, to the said circuit court; which upon being acknowledged by them, or a majority of them in open court, shall be recorded by the clerk of said court, and shall operate as a complete and effectual assignment of dower.

SEC. 5. In case the widow of such decedent shall fail or neglect to apply for the assignment of her dower, it shall and may be lawful for the heirs of such decedent, or any one of them, to have the same set off and assigned, agreeably to the provisions of the preceding section.

SEC. 6. When estates of which a woman is dowable are

entire, and when no division can be made by metes and bounds, dower thereof shall be assigned in a special manner, as of a third part of the rents, issues, and profits, to be computed and ascertained by the commissioners aforesaid: and when there are several tracts of land, if the widow shall select any particular tract or parcel of such estate lying together, in lieu of the dower she may be entitled to in all, the commissioners aforesaid may, if they think proper so to do, set off such tract or parcel to such widow, in full satisfaction of her dower.

SEC. 7. In cases of demand and refusal to assign dower, Refusal to assign, widow entitled to damages.

the widow shall be entitled to reasonable damages from the heir, or other person as aforesaid, from the time of such demand, to the time of the assignment of her dower.

SEC. 8. That widows may bequeath the crops of their Widows may bequeath the crops.

ground, as well of their dower, as of their other lands and tenements.

SEC. 9. No person endowed of lands, tenements, or hereditaments as aforesaid, shall wantonly or designedly commit waste thereon, or suffer the same to be done, on penalty of forfeiting that part of the estate, whereon such waste shall be made, or suffered to have been made, to him, her, or them, that have the immediate estate of freehold or inheritance, in remainder or reversion; and in case of negligent or inadvertent waste by her done or suffered, the damages that may be assessed for such waste, shall be recovered by action of waste.

SEC. 10. All tenants in dower, shall maintain the houses and tenements, with the fences and appurtenances whereof they may be endowed, in as good repair, as the same may have been delivered to them, during the term.

SEC. 11. If a wife willingly leave her husband, and go away and continue with her adulterer, she shall be barred forever from her dower; but if her husband become willingly reconciled to her, and suffer her to dwell with him, then she shall be restored to her right of dower.

SEC. 12. The said commissioners, shall each be entitled to one dollar and fifty cents per day for their services; and the clerk of the circuit court, the same fees that are now, or hereafter may be allowed by law, for similar services; to be paid by the person or persons applying for the assignment of said dower.

Dower may be assigned in a special manner.

Refusal to assign, widow entitled to damages.

Widows may bequeath the crops.

Waste.

Wife may be barred from dower.

Compensation to commissioners.

CHAPTER XXXIV.

An Act concerning proceedings in Ejectment, distress for Rent and tenants at will holding over.

[APPROVED, JANUARY 2, 1824.]

Distress, how made.
SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That it shall be lawful for any landlord, his, her, or their agent, or attorney, to make distress for rent, by virtue of this act, by obtaining a warrant from some justice of the peace, within the proper township, where such distress shall be made, to be issued on complaint upon oath, describing the premises for which such rent shall, or may be claimed as due in arrear, in what payable, when due, and the amount thereof; and that he is fearful that he will lose his rent by attempting to collect it, as other debts are collected.

Replevy in five days after notice.

Appraisement

Oath.

Sale.

Rescue of goods.

SEC. 2. That when any goods or chattels shall be distrained for rent reserved, and due upon any demise, lease, or contract, and the tenant or owner of the goods so distrained, shall not within five days after such distress taken, and notice thereof, with the cause of such taking, left at the dwelling house, or other most notorious place on the premises, charged with the rent distrained for, replevy the same with sufficient security, to be given to the sheriff according to law, that then and in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining, or his agent duly authorized, shall and may, with the sheriff, under-sheriff, or any constable in the county where such distress shall be taken, (who are hereby required to be aiding and assisting therein,) cause the goods and chattels so distrained, to be appraised by two reputable freeholders, who shall have and receive for their trouble the sum of fifty cents per day, and shall first take the following oath or affirmation: *I A. B. will well and truly, according to the best of my understanding, appraise the goods and chattels of C. D. distrained on for rent by E. F.;* which oath or affirmation, such sheriff, under-sheriff or constable, is hereby empowered and required to administer, and after such appraisement, shall and may, after six days public notice, lawfully sell the goods and chattels so distrained, for the best price that can be got for the same, for and towards satisfaction for the rent, for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement and sale, leaving the overplus if any, in the hands of the said sheriff, under-sheriff, or constable, for the owners use.

SEC. 3. Upon any pound breach, or rescue of goods and chattels distrained for rent, the person or persons aggrieved thereby, shall in a special action on the case for the wrong

sustained thereby, recover treble damages and costs of suit, against the offender or offenders, in such pound breach or rescue, or airy or either of them, or against the owner or owners of the goods distrained, in case the same be afterwards found to have come to his or their use or possession. No property distrained shall be driven out of the county, in which it was taken; and such removal shall be considered a trespass; and if committed by a landlord on the property of his tenant, shall be punished by exemplary damages, in an action of trespass quare clausum fregit: Distresses shall be reasonable; and he that takes great and unreasonable distress, shall be punished in the same manner, as for driving property so taken out of the county.

SEC. 4. That in case any distress and sale, shall be made by virtue of this act, for rent pretended to be in arrear and due, when in truth no rent shall appear to be in arrear, or due to the person or persons distraining, or him, her or them, in whose name or names or right, such distress shall be taken as aforesaid, then the owner of such goods and chattels distrained and sold as aforesaid, his, her or their executors or administrators, shall and may by action of trespass on the case, to be brought against the person or persons so distraining, any or either of them, his, her or their executors or administrators, recover double the value of the goods and chattels so distrained and sold, together with full costs of suit.

SEC. 5. The goods and chattels of any tenant, lying and being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years or otherwise, taken by virtue of any execution, shall be liable for the payment of all such sum or sums of money, as are or shall be due from such tenant for rent of the premises, at the time of taking such goods and chattels, by virtue of such execution; and the said sheriff, shall after sale of the said goods and chattels, pay to the landlord or other person empowered to receive the same, such rent so due, if so much shall remain in his hands, and if not, so much as shall be in his hands, and apply the overplus thereof if any, towards satisfying the debt and costs, in such execution mentioned: *Provided,* that the said rent, so to be paid to the landlord, shall not exceed one years rent.

SEC. 6. In case any lessee or tenant for life or lives, term of years, at will or otherwise, of any messuage, lands or tenements, upon the demise whereof, any rents are or shall be reserved or made payable, shall fraudulently or clandestinely, convey or carry off from such demised premises, his goods or chattels, with a view to prevent the landlord or lessor, from distraining the same for arrears of such rent, so reserved as aforesaid, it shall and may be lawful, to and proceed for such landlord or lessor, or any other person or persons, Tenant clandestinely removing his property, how landlord shall proceed.

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by him for that purpose lawfully empowered, within the space of thirty days next ensuing such conveying away, or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same may be found, as a distress for the said arrears of such rent, and the same to sell or otherwise dispose of in the same manner as if such goods and chattels had actually been distrained by such lessor or landlord, in or upon such demised premises, for such arrears of rent: *Provided*, That nothing herein contained, shall empower such landlord or lessor, to take or seize any such goods or chattels, as a distress for arrears of rent, which shall be bona fide, and for a valuable consideration, sold before such seizure made, to any person or persons not privy to such fraud as aforesaid.

Proviso, for bona fide sale.

Lessor may distrain stock, corn, &c.

To be appraised and sold.

Tenant concealing declaration in ejectment, to forfeit two years rent.

Landlord admitted defendant in ejectment.

SEC. 7. It shall and may be lawful to and for every lessor or landlord, lessors or landlords, or their bailiffs, receivers, or other person or persons empowered by him, her or them, to take and seize as a distress for arrears of rent, any cattle or stock of their respective tenants, feeding or pasturing upon all or any part of the premises demised or helden, and also to take and seize all sorts of corn, grass, hops, roots, pulse or other product whatsoever, which shall be growing on any part of the estate or estates, so demised or helden, as a distress for arrears of rent; and to appraise, sell or otherwise dispose of the same, towards satisfaction of the rent, for which such distress shall have been taken; and of the charges of such distress, appraisement and sale, in the same manner as other goods and chattels may be seized, distrained and disposed of; and the purchaser of any such corn, grass, hops, roots, pulse or other product, shall have free ingress, egress and regress, to and from the same where growing, to repair the fences from time to time, and when ripe, to cut, gather, make, cure, lay up and thresh, and after, to carry the same away, in the same manner as the tenant might legally have done, had such distress never been made.

SEC. 8. Every tenant to whom a declaration in ejectment shall be delivered, for any lands, tenements, or hereditaments, within this state, shall forthwith give notice thereof, to his or their landlord or landlords, or his, her or their bailiffs, receivers, agents or attorneys, under the penalty of forfeiting the value of two years rent of the premises so demised, or holden in the possession of such tenant, to the person of whom he, or she holds, to be recovered by action of debt to be brought in any court where the same shall be cognizable.

SEC. 9. It shall and may be lawful for the court, where such ejectment shall be brought, to suffer the landlord or landlords to make him, her, or themselves defendant or defendants, by joining with the tenant or tenants, to whom

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such declaration in ejectment shall be delivered, in case he, she, or they shall appear; but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector, for want of such appearance: but if the landlord or landlords of any part of the lands, tenements, or hereditaments, for which such ejectment was brought, shall desire to appear, and consent to enter into the like rule, that by the course of the court, the tenant in possession, in case he, or she had appeared, ought to have done, then the court where such ejectment shall be brought, shall and may permit such landlords so to do, and order stay of execution upon such judgment against the casual ejector, until they shall make further order therein.

Landlord enter into rule, &c.

SEC. 10. It shall be lawful for all defendants in replevin, or other tenant of the lands and tenements whereon such distress was made, to avow or make conusance generally, that the plaintiff in replevin, or other tenant of the lands whereon such distress was made, enjoyed the same under a grant or demise, at such a certain rent or service, during the time wherein the rent or service distrained for accrued, which rent or service was then, and still remains due, without further setting forth the grant, tenure, demise, or title of such landlord or landlords, lessor or lessors; and if the plaintiff or plaintiffs in such action shall become nonsuit, discontinue his, her, or their action, or have a judgment given against him, her, or them, the defendant or defendants in such replevin, shall recover double costs of suit.

Defendants in replevin may avow.

When plaintiff in replevin shall pay double costs.

SEC. 11. All sheriffs and other officers, having authority to serve replevins, may and shall, in every replevin of a distress for rent, take in their own names, from the plaintiff and one responsible person as security, a bond in double the appraised value of the goods distrained; such value to be ascertained by the oath or affirmation of one or more credible person or persons, not interested in the goods or distress, and which oath, the person serving such replevin, is hereby authorized and required to administer, and conditioned for prosecuting the suit with effect, and without delay, and for duly returning the goods and chattels distrained, in case a return be awarded, before any deliverance be made of the distress; and such sheriff or other officer as *May assign* aforesaid, taking any such bond, shall at the request and *bond, &c.* cost of the avowant or person making conusance, assign such bond to the avowant or person aforesaid, by endorsing the same, and attesting it under his hand and seal, in the presence of two credible witnesses; and if the bond so taken and assigned be forfeited, the avowant or person making conusance, may bring an action and recover thereon in his own name; and the court where such action shall be brought, may by rule give such relief to the parties upon

Sheriff take bond from plaintiff in replevin.

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such bond, as may be agreeable to justice and reason; and such rules, shall have the nature and effect of a defeasance to such bond.

Proceedings against tenants refusing to quit at the end of the term.

Complaint to two justices.

Warrant, jury &c.

SEC. 12. Where any person or persons have leased or demised any lands or tenements to any person or persons, for a term of one or more years, or at will, paying certain rents, and he, she or they, or his, her or their assigns, shall be desirous upon the determination of the lease, to have again, and repossess his, her or their estate so demised, and for that purpose shall demand and require his, or their lessee or tenant, to remove from and leave the same, if the lessee or tenant shall refuse to comply therewith in three months after such request to him made, it shall and may be lawful to and for such lessor or lessors, his, her or their heirs and assigns, to complain thereof to any two justices of the peace in the county, where the demised premises are situated; and upon due proof made before said justices, that the said lessor or lessors had been quietly and peaceably possessed of the lands and tenements so demanded to be delivered up, that he or they demised the same under certain rents to the tenant in possession, or some person or persons, under whom such tenant claims, or came into possession, and that the term for which the same was demised, is fully ended; then and in such case, it shall and may be lawful for the said two justices, to whom complaint shall be made as aforesaid, and they are hereby enjoined and required forthwith to issue their warrant, directed to the sheriff of the county, thereby commanding the sheriff to summon twelve freeholders, to appear before the said justices within four days next after issuing such warrant; and also to summon the lessee or tenant, or other person claiming or coming into possession under the said lessee or tenant, at the same time, to appear before them the said justices and freeholders, to shew cause if any he has, why restitution of the demised premises should not be forthwith made to such lessor or lessors, his or their heirs or assigns; and if upon hearing the parties, or in case the tenant or other person claiming or coming into possession under the said lessee or tenant, neglect to appear after being summoned as aforesaid, it shall appear to the said justices and freeholders, that the lessor or lessors had been possessed of the lands or tenements in question, that he or they had demised the same for a term of years, or at will, to the person in possession, or some other under whom he or she claims or come into possession, at a certain yearly or other rent, and that the term is fully ended, that demand had been made of the lessee or other person in possession as aforesaid, to leave the premises three months before such application to the said justices, then, and in every such case, it shall and may be lawful for the said two justices, to make a record of such

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finding by them the said justices and freeholders; and the Verdict, damages, & costs.

said freeholders shall assess such damages as they think right, against the tenant or other person in possession as aforesaid, for the unjust detention of the demised premises; for which damages and reasonable costs, judgment shall be entered by the said justices; from which judgment an appeal may be taken as in other cases, by either party: *Provided*, the appellant shall enter into a bond to the appellee, conditioned that such appellant shall pay all damages that may accrue to such appellee, in consequence of such appeal, if such suit is determined in the circuit court against the appellant; which bond shall be taken to the acceptance of the justices, from whose judgment the appeal is taken; and upon which judgment, provided no such appeal be taken, the said justices shall, and they are hereby enjoined, and required to issue their warrant, under their hands and seals, directed to the sheriff of the county, commanding him forthwith to deliver to the lessor or lessors, his, her or their heirs or assigns, full possession of the demised premises aforesaid, and to levy the costs taxed by the justices, and damages so by the freeholders aforesaid assessed, of the goods and chattels of the lessee or tenant, or other person in possession as aforesaid; *Provided*, that if the tenant shall

Appeal.

Possession.

Proviso, title set up by tenant.

allege, that the title to the lands and tenements in question, is disputed and claimed by some other person or persons whom he shall name, in virtue of a right or title accrued or happening since the commencement of the lease so as aforesaid made to him by descent, deed, or from or under the last will of the lessor; and if thereupon the person so claiming, shall forthwith or upon summons immediately to be issued by the said justices, returnable before them in six days next following, appear, and on oath or affirmation, to be by the said justices administered, declare that he verily believes that he is entitled to the premises in dispute, and shall, with one or more sufficient securities, become bound by recognizance, in the sum of two hundred dollars to the lessor or lessors, his, her or their heirs or assigns, to prosecute his claim at the next circuit court, to be held for the county where the lands and tenements shall be, then and in such case, and not otherwise, the said justices shall forbear to give the said judgment: *Provided also*, That if the said claim shall not be prosecuted according to the true intent and meaning of the said recognizance, it shall be forfeited to the use of the lessor or landlord; and the justices aforesaid shall proceed to give judgment, and cause the lands and tenements aforesaid, to be delivered to him, in the manner hereinbefore enjoined and directed.

Claimant give bond to prosecute his claim at the next circuit court.

When bond forfeited and possession given.

SEC. 13. It shall and may be lawful for any person or persons having any rent in arrear or due, upon lease for life or lives, or for one or more years, or at will ended and de-

After lease ended, lessor may distrain.

Elections General.

terminated, to distrain for such arrears, after the determination of the said respective leases, in the same manner as they might have done, if such lease or leases had not been ended or determined: *Provided*, that such distress be made during the continuance of such lessors title or interest.

Limitation of action of ejectment.

Twenty years

Saving.

SEC. 14. No action of ejectment shall be commenced or maintained, for the recovery of any lands or tenements, against any person or persons who may have been in the quiet and peaceable possession of the same, under an adverse title, for twenty years, either in his own right, or the right of any other person or persons, under whom he may claim; and any action of ejectment, commenced contrary to the provisions of this act, shall be dismissed at the cost of the party commencing the same: *Provided however*, that this act shall not be so construed, as to affect any person who may be a feme covert, non compos mentis, a minor, or any person beyond the seas, within five years after such disability is removed; nor shall any thing in this act be so construed, as to interfere with any action of ejectment that may be commenced within one year, from and after the twenty second day of January next.

CHAPTER XXXV.

An Act to regulate General Elections.

[APPROVED, JANUARY 7, 1818.]

Inspectors of election to be appointed.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the board of county commissioners at their first meeting in each and every year, shall appoint for every township within their respective counties, one respectable elector, residing therein, as an inspector of elections, who shall serve as such one year, and until another person is appointed to take his place, and shall cause a suitable number of blank forms of poll-books and election returns to be made out at such meeting, (headed and certified as the nature of the case may be,) for each inspector so appointed; a certified transcript of which appointment, together with the blank forms, they shall give into the hands of the sheriff of the county, whose duty it shall be to forward them to the proper person, at least ten days previous to the next election.

Judges and clerks of election to be appointed.

SEC. 2. Each inspector shall, previous to the time of opening the election, take to himself two other qualified voters of his township, who together with himself, shall be judges of elections for such township, during the time such inspector is appointed to serve; which judges shall at such election appoint two suitable persons as clerks of such election.

Elections General.

SEC. 3. Every inspector and judge of an election shall, before such election be opened, be sworn or affirmed that Inspectors, judges, and clerks to be sworn. he will faithfully and impartially do the duties assigned him by law, that he will not knowingly permit any person to vote, who is not qualified according to the constitution of this state, nor will he knowingly refuse the vote of any qualified elector, or cause any delay to persons offering to vote, more than is necessary to give satisfactory information of the qualification of such person as a voter; and if no person present is authorized to administer oaths or affirmations, then one of the judges shall swear or affirm the inspector, and the inspector being sworn or affirmed, shall swear or affirm the other judges; the inspector shall also swear or affirm the clerks of election, faithfully and impartially to discharge their duties as clerks of election.

SEC. 4. It shall be the duty of the inspector of elections, to attend at the place of holding elections in his township, on or before nine o'clock of the morning of the day of election, and if no inspector should appear by that time, then the voters of the township present shall appoint an inspector, who shall be governed in all things as is herein directed for inspectors appointed by the commissioners; and any vacancy that may happen in the appointment of a judge or judges of election, shall be supplied by the inspector as in the first instance.

Inspector failing to attend, the electors may appoint one.

SEC. 5. All elections shall be opened between the hours of nine and eleven o'clock of the day of election, and continue open until four o'clock in the afternoon of said day, after which hour the judges may close the polls at any time when all the voters present have voted or had an opportunity of voting, but shall not be compelled to wait more than fifteen minutes without a vote, until they close the polls, nor shall the polls be kept open after six o'clock.

Elections, when opened & when closed.

SEC. 6. Each qualified elector may vote once and no more; and if any person shall attempt to vote more than once, or to hand in two or more tickets folded together, or having voted in one township of his county, shall afterwards go into another on the same day and vote or attempt to vote, every person so offending shall, on conviction thereof, be fined in any sum not exceeding fifty dollars, and shall moreover be rendered incapable of voting or holding any office in this state for the next two years thereafter.

Penalty for voting in different townships.

SEC. 7. It shall be the duty of the inspector, before he proceeds to receive any votes, to cause it to be proclaimed aloud, that the election is opened; and when any person offers to vote, the inspector shall call out his name, and if there be no objection to the qualification of such person as a voter of that county, he shall receive his ticket, and in the presence of the other judges, put it into a box to be provided for that purpose, when the name of such person whose

Further duty of the officers of an election.

Elections General.

ticket is received, shall be again distinctly repeated by one of the other judges in the presence of the clerks, each of whom shall keep a separate list thereof, numbering every name taken down, so that it may be seen at any time whether their lists agree, and if an inspector, judge or clerk of election shall attempt to pry into or find out the names of any persons on a ticket that is handed in folded, or expose any such vote, he or they so offending, shall be liable to the same penalty as contained in the nineteenth section of this act.

SEC. 8. Every ticket handed in shall contain the name of every candidate such voter intends voting for, either in writing or print, designating the office to which he wishes each to be elected, and if more persons are designated to any office than there are candidates to be elected, such part of the ticket shall not be counted to either of them; but no ticket shall be lost for want of form, if the judges of the election can determine to their satisfaction the person voted for, and the office intended to be elected to.

SEC. 9. If any difficulty should arise in the course of an election hereafter to be held, in determining on the qualification as a voter, of any person wishing to vote, the inspector of such election is hereby authorized to swear or affirm such person to answer such questions as may be asked him relating thereto, or any bystander and the judges of said election shall decide from the examination as to the legality of such vote.

SEC. 10. When the polls are closed, or at any time after four o'clock of the afternoon, and the judges are at leisure, they may open the box and commence canvassing the votes, when the tickets shall be taken out carefully, one by one, by the inspector, who shall open them and read aloud the names of each person written or printed thereon, and the office for which every such person is voted for, and shall then hand it to one of the judges, who shall repeat the same, and hand it to the other judge, who shall string it on a thread of twine prepared for that purpose; but no judge or clerk of election shall vote after they begin to count the votes, nor shall they publish a statement of the polls until it is proclaimed by order of the inspector, that the election is closed.

SEC. 11. As the inspector shall open and read the tickets, each clerk shall carefully mark down the votes each candidate shall receive, in separate columns prepared for that purpose, with the name of such candidate written at the head thereof, and the office he is voted to fill; but if two tickets are found deceitfully folded together, they shall both be rejected.

SEC. 12. As soon as all the votes shall be read off and counted, the judges of the election shall make out a certifi-

Tickets to be
written or
printed.

Electors may
be sworn.

Votes to be
counted.

Certain tick-
ets may be re-
jected.

Certificate to
be given to

Elections General.

cate under their hands, stating the number of votes each the clerk of candidate received, designating the office for which he was circuit court, voted to fill; which number shall be written in words at full length; and the certificate, together with one of the lists of voters, and one of the tally papers, shall be put into the hands of one of the judges of election, who shall on the ensuing Wednesday, deliver the same to the clerk of the circuit court at the court house or place the courts are held, of such county, (or in his absence to his deputy,) who shall, in the presence of all the judges of election who attend from the different townships, between the hours of twelve and four o'clock, compare the different returns, and the persons having the highest number of votes, for all offices to be elected by the voters of that county only, shall be declared to be duly elected; and the clerk of the circuit court shall forthwith give them certificates of their election accordingly: but if two or more should be equal in votes, the clerk and judges present shall decide by lot which is elected.

SEC. 13. The clerk of the circuit court shall also make out in fair hand, in words at full length, a certificate of the number of votes each candidate for governor and lieutenant governor received, according to such return; which certificate he shall seal up and transmit to the speaker of the house of representatives, as directed by the constitution of this state; and a certificate of the return of votes for a representative or representatives to congress; and of the person or persons elected for sheriff or coroner, shall be forthwith forwarded to the office of the secretary of state. It shall be the duty of the secretary of state, on receiving the returns for representatives to congress, to compare said returns, and certify to the governor, for the time being, the person or persons having the highest number of votes duly elected, whose duty it shall be, to give such person or persons a certificate of his or their election, attested by the secretary of state.

SEC. 14. The list of votes, tally papers, and certificate of judges, which are directed to be forwarded to the clerk at the court house, or place where the courts are held of the county, shall be preserved by said clerk, to be inspected by any person who may wish to examine the same; and the other papers and tickets shall be preserved and kept by the inspector, for the term of six months, for the inspection of any of the voters of the township, who may wish to examine them.

SEC. 15. When the seat of any representative to congress or senator, or representative in the general assembly of this state, shall become vacant, the governor, for the time being shall issue his writ of election to the proper sheriff or sheriffs, commanding him or them to proclaim, that on a certain day, to be designated in said writ, there will be an elec-

Certificate of
election for
governor,
lieutenant go-
vernor, and
represen-
tatives in con-
gress, to whom
made.

List of votes
to be preserv-
ed.

When writ of
election to be
issued.

Elections General.

tion held to fill such vacancy; due notice of which proclamation each sheriff shall cause to be given to each inspector of elections, in the several townships throughout his county; and such election shall be governed in all respects as general elections are.

Mode of conducting an election where two counties compose one district.

SEC. 16. When two or more counties shall be joined together to compose one senatorial or representative district, the clerks of the circuit court of each county respectively, shall, on the return day of each election for senator, make out a certificate of all votes received by each candidate for senator or representative, and deliver the same to the sheriff; and the sheriff of each county of such senatorial or representative district, shall meet on the Saturday following, at the court-house of the oldest county in such district, where they shall compare the several certificates, and jointly give the person having the highest number of votes a certificate of his election; but if any two shall be equal and highest in votes, they shall decide by lot which is elected.

Penalty on those attempting to restrain the freedom of elections.

SEC. 17. If any person shall use any threats, force or violence, or attempt to awe any voter so as to restrain him in the freedom of choice, or offer any fee or reward, in meat, drink, or otherwise, in order to persuade any elector to vote contrary to his own mind, or shall, on the day of election, give any public treat, or direct any person to do it on his behalf, with a view to obtain any vote or votes for himself or any favourite candidate, every person so offending shall, on conviction thereof, by presentment or indictment, be fined in any sum not exceeding five hundred dollars, and shall, moreover be rendered incapable of holding any office of profit or honour for the next two years thereafter.

Ticket boxes to be provided.

Penalty on officers of election neglecting their duty.

Compensation to officers.

Further compensation.

SEC. 18. The commissioners shall provide a sufficient number of ticket boxes, at the expense of the county, for the several inspectors, to be kept by them and delivered over to their successors from time to time.

SEC. 19. If any commissioner, sheriff, clerk of the circuit court, or inspector, judge or clerk of election, shall neglect or refuse to perform the duties enjoined upon him by this act, or having taken upon himself to perform such duties, shall be guilty of fraud and corruption in doing such duties, he or they so offending, neglecting or refusing, shall, on conviction thereof be fined in any sum not exceeding five hundred dollars, together with costs of suit, by presentment or indictment.

SEC. 20. Each inspector, clerk or judge of election, shall have credit for one day's work on the public roads, for every day he shall be employed in attending election.

SEC. 21. The commissioners shall allow the returning judges of election a reasonable compensation for their ser-

Elections General.

vices rendered in compliance with the provisions of this act.

SEC. 22. If any candidate or elector of the proper county shall choose to contest the validity of any election, or the right of any person proclaimed duly elected in any county, to his seat in the general assembly of this state, such person shall give notice in writing to the person whose election he means to contest, or leave a written notice thereof at the house where such person last resided, within ten days after such election, expressing therein the points on which the same is contested, and shall also give notice to the inspector, judges and clerks of the township or townships, where such grounds for contesting the election of any candidate, may have arisen, as in case of the person proclaimed duly elected, and shall within the same time give notice to the sheriff of the county, who shall thereupon summons the county commissioners of the proper county, who shall be severally obliged to attend under the penalty of fifty dollars each; the sheriff shall appoint a place and time for the commissioners to meet within the county, which shall be within twenty days after the election; the said commissioners, or any two of them, shall have power to issue subpœnas, and compel the attendance of witnesses, to give evidence under the penalty of fifty dollars, to be levied on each and every delinquent who shall have been duly served with process, and the said commissioners so met, shall hear and certify, under seal, all testimony relative to said contested election, to the speaker of the house of representatives or president of the senate, as the case may be, at their next general assembly.

SEC. 23. No person shall contest any election, unless he is an elector of that county in which the elections are held: nor shall any testimony be received, except such as goes to shew mal-conduct or corruption in some one or more of the inspectors, judges, or clerks of the proper county; nor shall any testimony be received, which does not relate to the points specified in the notice: copies attested and sworn to by the person who delivers or leaves said notices, shall be delivered to said commissioners at the time of their meeting, and previous to their taking any person's testimony.

SEC. 24. All laws and parts of laws, heretofore in force in this state regulating elections, are hereby repealed.

This act to take effect and be in force from and after its publication.

Who may contest an election, and what testimony admissible.

CHAPTER XXXVI.

An Act to provide for electing County and Township Officers.

[APPROVED, JANUARY 31, 1824.]

Vacancy in
the office of
clerk, &c. how
filled.

Writ of elec-
tion to issue.

Notice.

Inspectors
when & where
to meet.

Certificate of
election to be
made out by
clerk of cir-
cuit court.

When no sh-
riff, clerk to
give notice.

Term of ser-
vice being
about to ex-
pire, when
election to be
helden.

Proviso.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana; That hereafter when the office of clerk of the circuit court, recorder, or associate judge shall become vacant by death, resignation, removal from office, refusal to qualify, or when the term of service of either of the aforesaid officers shall have expired, it shall be the duty of the governor on being informed thereof, to issue a writ of election directed to the person acting as sheriff of the county, where such vacancy shall have happened, commanding him to cause an election to be held in the several townships, for the purpose of filling the same, giving twenty days notice in writing; which election shall in all respects be conducted, as general elections are; and the inspectors or one of the judges of each township, shall meet at the place of holding courts in the county, on the third day after the election, (provided it should not be on Sunday,) and in such case on the succeeding Monday, and compare the several election returns, in presence of the clerk of the circuit court; who shall make out a certificate under his hand and seal, of the person duly elected, which he shall seal up and transmit to the secretary of state, excepting however cases of contest; in which the certificate aforesaid shall not be transmitted, until such election shall be confirmed: and the person returned duly elected, shall be commissioned by the governor and qualified into office, according to the constitution and laws of this state.

SEC. 2. Should there be neither sheriff nor coroner in such county, it shall be the duty of the clerk of the circuit court, to give the notice required of the sheriff, and should there be no clerk in any such county, or in his absence, it shall be the duty of the inspectors and judges aforesaid, to make out, seal up, and forward to the secretary of state, such certificate of election.

SEC. 3. That hereafter when the term of service of any of the clerks of the circuit courts, recorder, or associate judge shall be about to expire, a poll shall be opened in each township in the county, on the first Monday in August next preceding the expiration of his or their term of service; the return of which, shall in all respects be governed by the law regulating general elections: *Provided* that this act shall not be so construed as to authorize any person, who may be returned duly elected and commissioned as clerk of any of the circuit courts, recorder, or associate judge, to enter on the duties of his office, until the constitutional term for

which his predecessor may have been commissioned, shall have expired.

SEC. 4. The county commissioners in each and every county, shall lay off any number of townships in their respective counties, that the convenience of their citizens may require, describing the bounds thereof, which bounds shall be fairly recorded. The board of county commissioners in each county, shall from time to time, make such alterations in the bounds of townships, as they may think proper.

SEC. 5. When the board of county commissioners shall divide any new county into townships, or make any new townships, they shall appoint an inspector of elections in each new township, and order an election in every such township for such number of justices of the peace as they shall assign to each, not exceeding two to any one township; which election shall be governed in all respects as general elections are; and the persons having the highest number of votes (to the number to be elected in each township) shall be elected; and the returns of such election shall be made to the clerk of the circuit court of the proper county, the Wednesday following the election; a certified copy of which return shall be forwarded by the said clerk to the office of the secretary of state, within ten days after received, unless in cases of contested elections, certifying that such persons have been duly elected justices of the peace in such township and county; and the person so returned as elected, shall be commissioned by the governor, and qualified into office, in the same manner that associate judges are commissioned and qualified into office.

SEC. 6. When in the opinion of the board of county commissioners it shall be necessary, they may order two additional justices of the peace to be elected at each county seat, and one in any other incorporated town in said county, to reside therein; and in such cases, all the electors of the township wherein such election is held, shall be entitled to vote.

SEC. 7. When any justice of the peace by the formation of any new township, shall be brought within the limits of the same, he shall be considered a justice of the peace for such new township, for and during the residue of the term for which he was elected; but whenever any justice of the peace shall remove out of the township wherein he was elected, his office shall be vacated, and his authority by virtue thereof, shall cease. The board of county commissioners, or the clerk of the circuit court in recess, are hereby authorized to receive the resignation of justices of the peace; and in all cases of vacancies in the office of justice of the peace, by resignation, removal or otherwise, the county commissioners on being informed thereof, shall cause such vacancies to be filled by election, as directed by this act.

Commission-
ers shall lay off
townships.

Appointin-
g spectors, and
apportion the
number of j.p.

Return of
election
thereof.

Additional
justices may
be elected.

Change of
township not
to affect j.p.

Vacancies,
how filled.

Electors.

Contests, how decided.

SEC. 8. All contests of elections for county and township officers, shall be governed by the law regulating general elections; except that county commissioners, when called together to receive testimony, in cases of contested elections, shall be judges to decide the contest of such county and township officers as aforesaid.

CHAPTER XXXVII.

An Act to provide for the election of Electors of President and Vice-President of the United States.

[APPROVED, JANUARY 14, 1824.]

When electors of president and vice president shall be chosen.

Sheriff to give notice.

Judges of election to make out certificate of votes given.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the qualified electors of this state, shall on the second Monday of November next, and on the first Monday of November, in every fourth succeeding year, assemble in their respective townships, at the usual places designated for holding elections, and proceed to elect a number of electors of President and Vice-President of the United States, equal to the number of senators and representatives to which this state may be entitled, at the time of such election, in the congress of the United States; which election shall commence and close at the same hours, and be conducted in the same manner, as is or may be directed by law for electing members of the general assembly of this state; *Provided always*, that it shall be the duty of each and every sheriff within this state, to give notice of the time of holding such elections, together with the number of electors to be elected, by publishing the same in some newspaper printed within the county, or by advertising the same in three manuscript advertisements, to be set up in three of the most public places in their respective counties, at least twenty days preceding the time of holding said election.

SEC. 2. That it shall be the duty of the judges of such elections, in the several townships, to make out a certificate under their hands and seals, which certificate shall certify the number of votes in words at full length, that each person received for elector; and the same shall be attested by the clerks of said election; which certificate shall be sealed up in presence of the judges of such election, and the same shall be put into the hands of one of the judges of the election, who shall on the ensuing Wednesday, deliver the same to the clerk of the circuit court, at the court-house or usual place of holding courts in and for said county, or in his absence to his deputy; and in case there is neither clerk

Electors.

or deputy, then to the sheriff of the county, and if there is no sheriff, then to the coroner thereof, who shall in the presence of all the judges of elections, who may attend from the different townships, between the hours of twelve and four o'clock of said day, compare the different returns and make out in a fair hand, in words at full length, a certificate of the number of votes each candidate for elector received in the county, agreeably to the returns received from the several townships; which certificate, shall be signed by the clerk, deputy, sheriff or coroner, who may attend, and be sealed with the seal of the county, to be used for that purpose, and delivered by such clerk, deputy clerk, sheriff or coroner, as the case may be, to the marshall, that may be appointed to convey the votes from the district in which said county is situate, to the seat of government.

SEC. 3. That it shall be the duty of the several marshalls appointed by virtue of the provisions of this act, within this

Marshall, his duty.

state, or their deputies, which in case of sickness or unavoidable accident they may appoint, to deliver such certificates to the secretary of state on the fourth Monday of November, between the hours of nine and eleven o'clock of the morning of said day, at the seat of government; and it shall be the duty of the secretary of state, in the presence of the governor and all the marshalls who may attend from the different districts in this state, between the hours of twelve and six o'clock, on said fourth Monday of November, to open and compare the certificates so delivered by the marshalls, and read aloud the number of votes each person has received for elector of president and vice president of the United States, and shall make out a fair abstract of the names of the persons voted for, and the number of votes given to each; and it shall be the duty of the governor, forthwith to make out for the persons having the highest number of votes, certificates of their having been duly elected electors of president and vice president of the United States, and to transmit by the marshalls or some special messenger, the proper certificate to each person so elected, and shall forthwith cause the election of electors to be published in the newspaper printed at the seat of government. But if more than the number of persons to be elected, have the greatest and an equal number of votes, then the election of those having such equal number of votes, shall be determined by lot, to be drawn by the secretary of state in the presence of the governor and marshalls aforesaid.

SEC. 4. That the electors, who shall be chosen as aforesaid, shall at twelve o'clock on the day, which is or may be directed by the congress of the United States, meet at the seat of government of this state, and shall then and there

Secretary of state to compare certificate.

Governor to certify the persons elected.

Electors when & where to meet.

perform the duties enjoined upon them by the constitution and laws of the United States.

SEC. 5. That each elector of president and vice president of the United States, shall at ten o'clock of the day fixed by the law of congress to elect a president and vice president of the United States, meet the governor, whose duty it shall be to attend in the representative chamber, and it shall be the duty of the governor, forthwith to deliver to the electors present, a certificate of the names of all the electors, and if upon examination, it shall be found that one or more of said electors are absent, and shall fail to appear before eleven o'clock, in the morning of said day of election of president and vice president of the United States, the electors then present, shall immediately proceed to elect by ballot, in presence of the governor, a person or persons to fill such vacancy or vacancies, as may have been occasioned by the non-attendance of one or more of the electors.

SEC. 6. That if more than the number of persons required to fill the vacancy or vacancies as aforesaid, shall have the greatest and an equal number of votes, then the election of those having such equal and highest number of votes, shall be determined by lot, to be drawn by the governor in the presence of the electors attending, otherwise he or they, to the number required, having the greatest number of votes, shall be considered as elected to fill such vacancy or vacancies.

SEC. 7. That immediately after such choice is made in manner aforesaid, the name or names of the person or persons so chosen, shall forthwith be certified to the governor by the electors making such choice, and the governor shall cause immediate notice, in writing, to be given to each and every of the electors to be chosen to fill such vacancy or vacancies, as aforesaid, and the person or persons so elected and notified, shall be electors, and shall forthwith meet the other electors at the same time and place, and then and there discharge all and singular the duties enjoined on him or them, as electors as aforesaid by the constitution and laws of the United States, and of this state.

SEC. 8. The state of Indiana shall be divided into three return districts, as follows, to wit: The counties of Dubois, Pike, Gibson, Posey, Vanderburgh, Warrick, Spencer, Perry, Crawford, Knox, Sullivan, Vigo, Parke, Putnam, Daviess, Martin, Greene, and Owen to compose the first district; the counties of Orange, Washington, Jackson, Scott, Harrison, Floyd, Clark, Jefferson, Lawrence, Monroe, Marion, Morgan, Bartholomew, Jennings, Montgomery, Hendricks, and Johnson, to compose and form the second district; and the counties of Switzerland, Ripley, Dearborn, Decatur, Franklin, Shelby, Madison, Hamilton, Rush, Hen-

Vacancies,
how filled.

Equality of
votes, how de-
termined.

Governor to
notify elect-
ors.

First return
district.

Second dis-
trict.

Third district.

ry, Allen, Randolph, Wayne, Fayette, Union, shall compose and form the third district.

SEC. 9. It shall be the duty of the governor of this state, on or before the first Monday in August in every year when a president and vice president of the United States is to be elected, to appoint some trusty citizen of the state of Indiana, in each of the aforementioned districts, who shall be known as the marshall of such district, to be in office until all the duties required of such officer by this act, are performed and no longer. And it shall be the duty of such marshall within ten days after receiving the appointment aforesaid, and before the first Monday in November, in the year aforesaid, to go before some officer authorized by law to administer oaths, and shall there make an affidavit Take oath. that he will without fraud or delay, (accidents excepted,) perform the several duties required of him by this act, and well and truly deliver the several certificates or returns of votes for president and vice-president of the United States, to the secretary of state, as he may receive the same, at the different counties, in such manner as is prescribed by law, and shall have the same endorsed, by the officer that may administer the oath, on the back of the governor's appointment, which shall be an authority for such marshall to receive the certificates from the officer of the county, who may be in possession of the same. It shall be the duty of the marshall of each district to bring the returns from each county in his district to the seat of government, at such time, and in such manner as is prescribed by this act.

SEC. 10. The judges and clerks of elections shall be allowed the same compensation, that is allowed in other cases, and the officer, making the certificate in presence of the judges, shall be allowed the sum of one dollar for the same; and the several marshalls shall be allowed ten cents Allowance to per mile for each mile they may travel, in collecting the returns, and ten cents per mile, for each mile they may travel to and fro. the seat of government from the nearest county in their districts to the same; to be computed by sections from county seat to county seat, and from the nearest county as aforesaid to the seat of government, to be audited by the auditor, and paid out of the state treasury by the treasurer, out of any monies not otherwise appropriated.

SEC. 11. That in all cases when the offices of both president and vice-president of the United States shall become vacant, and notice thereof is given to the executive of this state, it shall be the duty of such executive officer to issue writs of election to the sheriffs of each county in this state, directing them to proceed in the same manner to advertise an election to fill such vacancies, as they are bound to do by the provisions of this act; and it shall be the duty of all sheriffs, judges, clerks, marshalls, and other officers, and all

Proceedings
in case of va-
cancies of pre-
sident & vice-
president.

Electors.

others, together with the governor, and they are hereby enjoined and directed to do and perform in such cases, and under the same penalties, all and singular the duties and acts enjoined and directed by this law. And it shall be the duty of the electors to proceed to elect in the same manner as is required by this act, any thing herein contained to the contrary notwithstanding.

SEC. 12. That the sheriffs of the different counties shall each receive for his services performed under this act, the following fees, to wit: for advertising the election, one dollar, which fee shall be allowed by the auditor, and paid by the treasurer out of any monies not otherwise appropriated.

SEC. 13. That each and every elector, who shall attend as an elector at the seat of government as aforesaid, shall be entitled to receive two dollars for each and every days attendance, and two dollars for every thirty miles travel of the estimated distance, by the most usual route from his place of residence to the seat of government, and the like sum for returning, which sum shall be allowed by the auditor, upon the certificate of the governor, and paid by the treasurer, out of any monies not otherwise appropriated.

SEC. 14. That the judges and clerks of elections, under the provisions of this act, for failing to perform the duties enjoined upon them by this act, shall forfeit and pay the sum of one hundred dollars, to be recovered on motion in any court having jurisdiction thereof, the party having ten days previous notice of such intended motion. All marshalls and other officers who shall neglect or refuse to perform their duties enjoined upon them by this act, shall forfeit and pay any sum not exceeding one thousand dollars, to be recovered on motion in any court of record having jurisdiction of the case in this state; and it shall be the duty of the prosecuting attorney in each and every county within this state, upon being sufficiently advised of such failure or neglect, to proceed against such officers, as directed in this section, and such fine, after deducting ten per centum as a fee for said attorney, shall be paid to the trustee of the county seminary for the use of the same.

SEC. 15. The marshalls named in this act, are hereby authorized to appoint one or more deputies, where the necessity of the case may require it, which deputy or deputies are required to take the same oath that the said marshall is required to take, and in all cases, where any marshall in this act named, may die or remove from this state, after the fifteenth of August next, before such election, it shall be the duty of the associate judges of the circuit court of the county where such marshall resided, to convene and forthwith proceed to appoint a marshall in place of such deceased or removed marshall, which said marshall, when so appointed,

Allowance to sheriffs.

Allowance to electors.

Penalty for violating the provisions of this act.

Prosecuting attorney, his duty.

Marshalls may appoint deputies.

Vacancy in the office of marshall, how filled.

Enclosures.

shall take the same oath, perform the same duties, and receive the same compensation, and shall be liable to the same penalties that a marshall appointed under other provisions of this act, would be entitled to receive, perform, take or sustain. All laws and parts of laws heretofore in force in this state, authorizing the appointment and defining the duties of electors, be and the same are hereby repealed.

CHAPTER XXXVIII.

An Act regulating Enclosures.

[APPROVED, JANUARY 27, 1818.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That all fields kept for enclosures, shall be well enclosed with a fence composed of sufficient posts and rails, posts and pailing, palisadoes or rails alone, laid up in the manner which is commonly called a worm fence; which posts shall be deep set and strongly fastened in the earth, and all fences composed of posts and rails, posts and pailings, or palisadoes, shall be at least five feet in height; and all fences which are composed of rails in manner which is commonly denominated a worm fence, shall be at least five feet. What shall be six inches in height, the uppermost rail in each and every a legal fence, pannel thereof, supported by strong stakes strongly set and fastened in the earth, so as to compose what is commonly called a stakeing and ridering, otherwise the uppermost rail in each and every pannel shall be braced with two strong rails, poles, or stakes, locking each corner or angle thereof; and in all the foregoing materials, the apertures between the rails, pailings, or palisadoes within two feet of the surface of the earth, shall not be more than four inches, and from the distance of two feet from the surface of the earth, the apertures between such rails, pailings, or palisadoes shall not be more than six inches, and that in all worm fences staked and ridered, the worm shall be at least four feet six inches, and if locked as aforesaid, the worm shall be at least five feet; and all fences of the height and strength herein required, shall be considered lawful against horses and neat cattle.

SEC. 2. If any horse, mule, or ass, sheep, goat, or neat cattle, shall break into any person's enclosure, the fence being of the aforesaid height and strength, or if any hog or hogs shall break into any person's enclosure, the fence being of the aforesaid sufficiency, and by the view of two persons for that purpose appointed by the board of county com-

Owner of animals committing breaches, to pay damages.

missioners of said county, found and approved to be such, then the owner of such creature or creatures, shall be liable to make good all damages to the owner of the enclosure; for the first offence, single damages only; ever afterwards, double the damages sustained.

Partition fences, how maintained.

SEC. 3. For the better ascertaining and regulating of partition fences, it is hereby directed that when any neighbour shall improve lands adjacent to each other, or where any person shall enclose any lands adjoining to another's land already fenced, so that any part of the first person's fence becomes the partition fence between them, in both these cases, the charge of such division fence (so far as enclosed on both sides) shall be equally borne and maintained by both parties; to which and other ends in this law mentioned, the board of county commissioners in the several counties in this state, yearly, shall nominate and appoint three honest and able men, for each township respectively, who being duly sworn to the faithful discharge of the duties of their appointment, shall proceed, at the request of any person or persons feeling him or themselves aggrieved, to view all such fence or fences, about which any difference may happen to arise; and the aforesaid persons or any two of them in each township respectively, shall be the sole judges of the charge to be borne by the delinquent or by both or either party, and of the sufficiency of all fences, whether partition or others; and when they shall adjudge any fence to be insufficient, they shall give notice thereof to the owners or proprietors or occupiers thereof, upon request of the other, and due notice given by the said viewers, shall refuse or neglect to make or repair the said fence or fences, or to pay the moiety of the charge of any fence before made, being the division or common fence, within twenty days after notice given, then upon proof thereof before two justices of the peace of the respective county, it shall be lawful for the said justices to order the person aggrieved or suffering thereby, to make or repair the said fence or fences, who shall be reimbursed his costs and charges from the person so refusing or neglecting to make or repair the partition fence or fences aforesaid; or to order the delinquent to pay the moiety of the charge of the fence before made, being a division or common fence, (as the case may be,) and if the delinquent shall neglect or refuse to pay to the party injured, the moiety of the charge of any fence before made, or to reimburse the costs and charges of making and repairing the said fence or fences, under the order aforesaid, then the same shall be levied upon the delinquent's goods and chattels, under warrant from a justice of the peace, by distress and sale thereof, the overplus, if any, to be returned to the said delinquent: *Provided*, that nothing herein contained, shall be intended to prevent or debar any person or persons from

Commissioners to appoint viewers.

Proceedings of viewers.

enclosing his or her own grounds in any manner they please, with sufficient walls or fences of timber, other than those heretofore mentioned, or by dykes, hedges or ditches. All such walls and fences to be in height, at least five feet from the ground, and all dykes to be at least three feet in height from the bottom of the ditch, and planted and set with thorn and other quickset, so that such enclosures shall fully answer and secure the several purposes meant to be answered and secured by this law: *Provided also*, that such walls or fences of timber, other than those heretofore mentioned, and dykes, hedges and ditches, shall be subject to all provisions, inspections, and restrictions respectively, to which by this law, any other enclosure or fence is made liable, according to the true intent and meaning hereof,

CHAPTER XXXIX.

An Act regulating the taking up of Animals going astray, and Water craft and other articles of value adrift.

[APPROVED, JANUARY 7, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That if any person or persons shall take up any boat, flat, periogue, canoe, raft or other article of value adrift, he, she or they shall within five days cause the same to be advertised, in at least three of the most public places in the township, where such property is taken up, stating the time it was taken up; or if such property is worth and can be sold for ten dollars or more, then notice of such taking up shall be given by the taker up, in some public newspaper, if there be any in the county where such property is taken up, and if there should be no newspaper printed in said county, then notice of such taking up shall be given by three written advertisements, set up in three of the most public places in said county, and the owner or owners of such property, by proving the same within six months from the time it was taken up, shall receive the same, after paying to the taker up, a reasonable sum for his trouble and expense, to be determined by some disinterested justice of the peace, if they cannot agree upon such sum.

How persons shall proceed, taking up boats, &c.

When the owner shall claim.

SEC. 2. Every person who shall take up a stray horse, mule or ass, shall within five days, advertise the same in three of the most public places in the township wherein such animal may be taken up; and shall also within ten days thereafter, unless it shall have been previously claimed and proved by the owner, and a tender made of the com-

Proceedings, on the taking up of horses, &c.

Estrays

pensation hereinafter provided, take the same before some justice of the peace of the county, in which such estray shall be taken up, and make oath before such justice, that the same was taken up on his or her plantation or elsewhere, (as the case may be,) and that the marks or brands thereof, have not been altered by him or any other person, to his or her knowledge, either before or since such taking up. The justice shall then issue his warrant to three disinterested householders in the neighbourhood, unless they can be otherwise had, directing them to come before him to appraise such estray; and after they or any two of them are sworn to appraise such estray without partiality, favour or affection, they shall forthwith proceed to appraise the same, and immediately make return thereof in writing, together with a description of the marks, both natural, artificial and accidental, brand, colour, size and age of said horse, mule or ass, to said justice, who shall enter the same in his book of estrays, and transmit a certified copy thereof, un-

Appraisemen

Description o
animal.

To be returned to clerk of circuit court.

Fees to j. p.
and clerk.

Proceedings to
be had on tak-
ing up neat
cattle, &c.

SEC. 3. Any person who shall take up any head of neat cattle, any sheep, hog or goat, shall within five days thereafter cause the same to be advertised in three of the most public places of the neighbourhood or township, and shall also within ten days thereafter, unless it shall have been previously claimed and proved by the owner, and a tender made of the compensation hereinafter provided, cause the same to be viewed by some householder of the county where the same shall be taken up, and immediately go with such householder before a justice of the peace of said county, and make oath before him as is required in taking up horses, mules or asses going astray; and such justice shall take from such householder upon oath, a particular description of the marks, brands, colour, size and age of every such neat cattle, sheep, hog or goat; and such justice shall cause

Estrays.

such estray or estrays to be appraised in the same manner, as is required in the case of stray horses; which description and valuation shall be entered by such justice in his book of estrays, and by him transmitted to the clerk of the circuit court for said county, to be by him recorded in his book of estrays: and he shall cause a copy to be publicly affixed at the court house door of his county, as before directed in the case of stray horses; and the taker up shall pay the said justice fifty cents, twenty-five cents of which he shall transmit at the same time with the certified copy to the clerk j. p. & clerk. aforesaid for his services: *Provided*, that if two or more estrays of the same species are taken up by the same person at the same time, they shall be included in one entry and one advertisement; and in such case the said justice and clerk shall receive no more than for one of such species; and no person shall be allowed hereafter to take up or post any head of neat cattle, sheep, hog, or goat, between the first day of April and the first day of November following, unless the same be found within the enclosure of the taker up.

SEC. 4. As a reward for taking up, there shall be paid by the owner to the taker up, or such other person as may be authorized by this act to receive the same, for every horse, mule or ass, one dollar; for every head of neat cattle, fifty cents; for every sheep, goat, and hog above six months old, ten cents, together with the fees paid by the taker up, to the justice and clerk aforesaid, and reasonable charges for keeping said stray or strays, to be assessed by two disinterested householders appointed by some justice, in the manner appraisers are appointed under this act; who shall in the same manner and under the same restrictions, proceed to make appraisement and return to the said justice, as by this act is in other cases required; and on failure of the claimant to satisfy such fees and charges, the stray or strays shall be by some constable, after giving five days notice, sold to the highest bidder, to satisfy such costs and charges for keeping; and the said constable, after paying such costs and charges, and deducting one dollar for his fees of sale, shall pay the remainder to the claimant; but if any person taking up an stray shall use or work it, he shall not be allowed any pay for keeping the same.

SEC. 5. If any person or persons who may take up any animals going astray, or property adrift, under the provisions of this act, shall be guilty of neglect or abuse towards the same, or shall treat any such animal or property, in such manner as to render the same of less value, than it was when taken up, or shall neglect or refuse to comply with any of the provisions in this act, such person or persons shall not be allowed any compensation for his, her, or their trouble, and shall moreover be liable to be prosecuted in any

- Allowance to
x j. p. & clerk.
- Proviso.

Reward for
taking up es-
trays.

- Reasonable charges allowed.

Estrays may
be sold for
nonpayment
of costs, &c.

Estrays.

Owner to
make claim
within one
year.

Estrays not
claimed, how
disposed of.

Penalty for
selling estrays

Who may
take up es-
trays.

Penalty on
those taking
up estrays
without au-
thority.

Appropria-
tion of such
fine.

Taker up
shall certify

court of competent jurisdiction, in an action on the case, for all damages the owner of said stray or property may have sustained in consequence of the abuse of the same.

SEC. 6. If the owner or owners of any stray animals taken up under the provisions of this act, shall not appear within one year after the publication required in this act, and prove his, her, or their property, then and in that case, the taker up shall either pay the amount of the appraisement, after deducting all reasonable expenses, into the county treasury, or produce the property on the first day of the circuit court next ensuing; and the same if produced, shall be sold by the sheriff to the highest bidder, between the hours of ten A. M. and four P. M. of said day, for county funds; and the amount of the sale, after allowing two per cent. thereon to the sheriff, and all lawful charges aforesaid, shall be paid into the county treasury, and shall be refunded to the owner of the property, on proof of the same made within three years to the county commissioners; and any person taking up an stray who shall neglect or refuse to comply with the provisions of this section, shall on conviction by presentment or indictment, be fined in double the value of the property.

SEC. 7. If any person or persons shall trade or sell any such stray, water craft, or article of value found adrift, before he, she, or they are vested with the right of property agreeably to this act, for any purpose whatsoever, he, she, or they shall forfeit and pay double the value thereof, to be recovered by presentment or indictment, in any court of competent jurisdiction, the proceeds of which, shall be appropriated to the benefit of county seminaries, in the county where such recovery shall be had; and it shall not be lawful for any person or persons to take up an stray, except as shall be hereafter directed, unless he, she, or they shall have a freehold, or be a tenant for three years, or hold a bond for the land on which he or she resides.

SEC. 8. That if any person or persons, not owning any land by deed or bond, or not holding any lease for the term of three years or more, shall take up any stray animal or animals, he, she, or they so offending, shall be fined in any sum not exceeding double the value of such animal or animals, to be recovered before any court of competent jurisdiction in the proper county, in the same manner that other fines are recovered, which, when collected, shall be paid over to the trustee of the county, for the use of county seminaries.

SEC. 9. When any animal taken up in pursuance of this act, the appraised value of which shall exceed five dollars, may be restored to the owner, or where the same may be lost, it shall be the duty of the taker up within one month afterwards, to certify in writing under his hand, to the

Estrays.

clerk aforesaid such restoration, when the same may have been restored, with the name and place of residence of the person claiming the same; or such loss, when the same has been lost, together with the time and manner thereof; and if the taker up of any animal taken up in pursuance of this act, shall neglect to make the certificate aforesaid, within the time limited by this act, or shall make a false statement of facts in any such certificate, every person so offending, for every such offence, shall forfeit and pay the value of such stray animal or animals, respectively, to be recovered by presentment or indictment, in any court of competent jurisdiction in the proper county, in the same manner that other fines are recovered; which, when collected, shall be paid over to the trustee of the county, for the use of county seminaries.

SEC. 10. When any person hereafter shall claim any stray or estrays, taken up under the provisions of this act, within one year from the time of such taking up, it shall be lawful for him to apply to the taker up, or his legal representatives in person, whose duty it shall be to go with him to the nearest justice of the peace in the county, in order that the claimant may have an opportunity to prove and regain his property; but if the taker up, or his legal representatives, shall neglect or refuse to comply with his request, the claimant may apply to the nearest disinterested magistrate, whose duty it shall be to issue his warrant, commanding the taker up or his legal representatives, to come before him, and to bring along with him, the stray or estrays claimed, if they be horses, mules or asses, and on the claimant's proving to the satisfaction of the magistrate, that said stray or estrays are the property of the claimant, he shall order the restoration of the same to the claimant aforesaid, on his paying the necessary expenses of posting and keeping (as the case may be,) and on his refusal or neglect so to do, the magistrate shall proceed to dispose of such stray or estrays, as is herein before directed; but if the stray or estrays should be neat cattle, sheep, goats or hogs, the taker up or his representatives shall not be compelled to produce them before the magistrate, but the claimant may take his witness or witnesses to them, and after having viewed the property, if said claimant shall make such proof to the magistrate, as to satisfy him of the justice of his claim, he shall order their restoration, in the manner and on the conditions provided in the case of stray horses, mules and asses; but if any of the estrays aforesaid, have been sold for the use of the county, the claimant shall have his recourse against the county, and not against the taker up.

SEC. 11. The commissioners in each and every county within this state, shall cause a pound to be erected, at or near the several court houses, with a good and sufficient

How the own-
er may recov-
er estrays un-
der the pro-
visions of this
act.

Commission-
ers shall cause
a pound to be
made.

Estrays.

fence, gate, lock and key, where all stray horses, mules and asses above two years old, taken up within twenty miles of the court house, shall be kept on the first day of every circuit court, for the three succeeding terms after the same shall be taken up, from eleven until three o'clock in each day, that the owner may have an opportunity of claiming his, her or their property; and any person taking up any such horse, mule or ass, not exceeding two years old, shall not be compelled to exhibit such estray or estrays at the court house, but shall be governed in other respects as is directed in this act; and when any person taking up any stray horse, mule or ass, more than two years old, resides twenty miles and upwards from the court house, he shall not be compelled to exhibit such estray or estrays, more than once in the pound, which shall be on the first day of the second term after taking up; and until such pound is erected, no person taking up any horse, mule or ass, shall be liable to any penalty, for not exhibiting the same; and the commissioners in each and every county shall appoint some fit person to take charge of said pound, and keep the same in repair, whose duty it shall be to attend at the said pound on the several court days, during the time such strays are directed to continue therein, with the key of the same; and the said commissioners shall make such reasonable allowance for the expense of erecting and keeping the said pound, as to them shall seem proper, to be paid out of the treasury in like manner and form, that other county charges are liquidated and paid; and any person being appointed and undertaking to take care of the said pound, and failing to discharge his duty agreeably to the directions of this act, shall forfeit and pay to the person injured, the sum of eight dollars for every such offence, with costs, recoverable before any justice of the county, where such offence shall have been committed.

SEC. 12. That if any person or persons, shall hereafter take up any stray animal or animals, water craft, or article of value going adrift, under the provisions aforesaid, and shall remove the same out of the county in which such estray was taken up, so as to prevent the owner or owners thereof from reclaiming the said animal or animals, water craft, or property as aforesaid, for more than the space of three days at any one time, such person or persons so offending, shall be subject to the same forfeitures, to which persons are subject for trading or selling estrays, water craft or property, and to be recovered in the same manner.

SEC. 13. Any person or persons, who shall take into custody any horse, except at his, her or their place of residence, or shall drive any live stock out of the woods to their place of residence, and shall take up such horse or stock, such person or persons so offending, on conviction thereof,

When estrays
shall be put
therein.

Pound keeper
to be appoint-
ed.

Allowance to
pound keeper.

Penalty on
taker up of
estrays &c. re-
moving them
out of the
county.

Estrays.

before a competent tribunal, shall be fined in any sum not exceeding one hundred dollars, and shall moreover be liable to an action of damages to the party injured: But nothing in this section shall be so construed as to affect any person who shall take up any horse that may be running at large in a wilderness country distant from any settlement, that might be lost to the owner if not taken up, or who may drive in any live stock out of the woods, to his place of residence in the winter time, and take the same up according to law, that may be likely to perish for want of food, or on account of the inclemency of the season; if such horse or stock be not taken out of the limits of the county, where they may be running or may be found: *Provided always,* Proviso. that when any horse, mare, gelding, horned cattle or other property, may be in the act of escaping from the owner or owners, or those entitled to the immediate possession of the same, that the same may be taken up under the provisions of this act, at any time of the year or at any place in the county, where such animals may be found going astray.

SEC. 14. If any person or persons shall take up any stray animal, water craft, or article of value adrift, and shall neglect or refuse to comply with the provisions of this act, the person or persons so offending, shall on conviction thereof, be fined in any sum not exceeding one hundred dollars, at the discretion of the jury who shall try the same: *Provided however,* that on complaint made to any justice of the peace, for a violation of the provisions of this act, the fact or facts being fully proved, if in the estimation of such justice, the fine for such offence ought not to exceed three dollars, or the law does not fix the fine for such offence at a greater sum, he may inflict a fine commensurate to the offence, not exceeding three dollars, saving to the individual so fined, the right of an appeal to the circuit court, if the same be applied for within ten days next succeeding the assessment of such fine; which if confirmed by the said court, the appellant shall be liable for all costs, together with such fine, and shall stand committed until the same be paid.

SEC. 15. In all cases of taking up any craft or other article of value adrift under the provisions of this act, if the same shall be valued at ten dollars or upwards, it shall be the duty of the taker up, within ten days thereafter, to advertise the same in some newspaper printed in this state, most convenient to the taker up, as in the case of estrays, and if the same shall not be reclaimed within twelve months after such taking up, then and in that case the said craft or other article of value, or the appraised value thereof, shall be dealt with, governed and disposed of, in every respect as is pointed out in this act for the disposition and regulation of stray animals or the values thereof, except that the taker up, shall not be compelled to convey the same to the seat of

Penalty for
taking up es-
trays running
at large.

Exception.

Proviso.

Penalty on
those who
shall fail to
comply with
this act.

Proceedings
on taking up
water craft,
&c.

Execution.

justice, nor the sheriff to remove the same, previous to the sale thereof; and the taker up, shall be subject to the same forfeitures and penalties, for a violation of the provisions of this section, that he would be for a violation under this act of the provisions made in the case of stray animals.

All laws and parts of laws now in force in this state, regulating the taking up of animals going astray, and water craft or other articles of value adrift, be and the same are hereby repealed.

CHAPTER XL.

An Act subjecting Real and Personal Estate to Execution.

[APPROVED, JANUARY 30, 1824.]

Personal and real estate subject to execution.

Necessary wearing apparel excepted.

How levied.

Personal estate to be first levied on, and sold.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the personal and real estate of every individual, company, body politic or corporate, including his, her, or their goods, chattels, lands, tenements, and hereditaments be, and the same are hereby made subject to execution, to be taken and sold according to the provisions of this act, except, that necessary wearing apparel shall not be considered any part of such execution defendant or defendants estate.

SEC. 2. That when hereafter, any writ of execution may issue against the goods and chattels, lands and tenements, of the execution defendant or defendants, it shall be the duty of the sheriff or other officer, to levy such execution, upon such part of the estate of such execution defendant or defendants, as he, she, or they may direct; but if no such direction shall be given, the messuage, lands or tenements, on which the defendant or defendants may be chiefly situated, shall not be levied on, unless a sufficiency of other property cannot be found: *Provided however*, that in all cases the sheriff or other officer shall be bound, first to levy on and sell the personal estate of such defendant or defendants, before he shall levy on any real estate, unless such defendant or defendants, will authorize such sheriff or other officer to sell his, her, or their real estate, for the best price it will bring, but such sheriff or other officer shall not in any case be bound to levy on property turned out, or shewn to him by such defendant or defendants, if there exists any reasonable doubt whether such defendant or defendants, is or are the bona fide owner or owners of such property, so turned out or shewn by such defendant or defendants to any such officer.

Execution.

SEC. 3. When execution shall hereafter issue on any Real and personal estate judgment, real and personal estate shall sell for the best price it will bring: *Provided however*, the sheriff or other officer shall in all cases mentioned in this section, before he it will bring, offer the fee simple of any real estate for sale, offer the rents and profits of the same for sale for seven years; and if the rents and profits shall sell for a sufficiency to satisfy such execution, the sheriff or other officer shall make the purchaser a deed, and put him in possession accordingly; but if such rents and profits will not sell to satisfy the same, then the fee simple shall be offered for sale, and the sheriff or other officer shall make a deed to the purchaser accordingly.

SEC. 4. That hereafter when any execution shall issue to any sheriff or other officer, against the goods and chattels, or against the goods and chattels, lands and tenements, of any execution defendant or defendants, it shall be lawful for such defendant or defendants, if he or they have a family or families, to claim as exempt from execution, the following personal goods, to wit: One bible, one cow and calf, one bed and the necessary bedding therefor, household and kitchen furniture not exceeding in value ten dollars, one chopping axe, one weeding hoe, one spinning wheel, one reel, and the necessary provisions to supply the family two months; which said personal goods, so claimed by such execution defendant or defendants, such sheriff or other officer shall recognize as exempt from execution: *Provided* that the whole amount of property, hereby exempted from execution, shall in no case exceed fifty dollars in value.

SEC. 5. That when any sheriff or other officer shall hereafter offer for sale, the use or fee simple of any real estate, by virtue of the provisions of this act, such sheriff or other officer, shall give at least twenty days notice of the time and place of such sale, by advertising the same in three of the most public places, by written advertisement set up in the township or townships, where such real estate is situate, and also by advertising the same in the nearest weekly newspaper, for three weeks immediately preceding any such sale, if any such paper be printed in his county. And when any such sheriff or other officer, shall sell any personal goods, by virtue of the provisions of this act, he shall give at least ten days notice of the time and place of such sale, by advertising the same in three of the most public places, by written advertisements, set up in the township where such sale shall take place.

SEC. 6. In case the personal goods, lands, and tenements, so as aforesaid taken and sold, by virtue of the provisions of this act, under any such execution, do not on the sale thereof, sell for a sufficient sum to pay the debt, damages, and costs, due and accruing on such execution, it shall be

Execution.

Alias execution may issue

lawful for such officer to return such execution, with his proceedings thereon; whereupon another writ of execution shall issue, upon which, such sheriff or other officer shall proceed to levy and sell in manner and form, as herein before set forth, and make return of his proceedings as in other cases.

Venditioni exponas.

SEC. 7. Whenever it shall so happen, that any sheriff or other officer shall expose to sale, under the provisions of this act, any goods and chattels, lands and tenements, and the same cannot be sold for want of buyers, it shall be lawful for such sheriff or other officer, to return upon such writ of execution, that he exposed the same to sale, and that they remain in his hands unsold for the want of buyers; whereupon the writ or writs of venditioni exponas shall issue, commanding the proper officer to proceed to sell the same, agreeably to the provisions of this act; and where any sheriff or other officer, shall under the provisions of this act, have sold any real estate, and previous to making any deed therefor to any such purchaser, such officer shall go out of office, by death, removal, resignation, or otherwise, it shall be the duty of the successor of such officer, to make the necessary deed or deeds to such purchaser, provided the purchase money has been duly paid.

Successor of the officer selling, may execute deeds.

Property of principal to be disposed of before that of security.

SEC. 8. When it shall appear upon the face of any writ of execution, or upon any endorsement thereon, that any one or more of the defendants, against whom such writ of execution issued, are only security for any one or more of the defendants in such writ named, the sheriff or other officer shall in such case, sell or dispose of all, or so much of the personal or real estate of such principal defendants, as such officer shall be able to find in his bailiwick, before he shall dispose of any part of the personal or real estate of such security, unless such officer shall be otherwise directed by such security.

Right of property, how tried.

Appeal.

SEC. 9. When any personal estate shall be taken in execution, and any person other than the execution defendant, shall make claim thereto, it shall be the duty of the sheriff or other officer, to summon three disinterested householders, and try the right of such estate; which trial shall be held before any justice of the proper township, in which such estate may be; and such justice being summoned by such officer, shall for that purpose attend; and should any person consider themselves aggrieved by the verdict of such jury, it shall be the duty of such justice, to certify up to the circuit court of the proper county, a true transcript of such proceedings before him had, under such restrictions and limitations, as are provided in other cases of appeal from judgments of justices of the peace; and furthermore, take from the person who may retain in their possession the estate in controversy, a bond with sufficient security for the

Execution.

delivery of the same, to whomsoever it shall be determined to belong, by the judgment of the circuit court on said appeal; which judgment of the circuit court shall be final, and no writ of error or appeal be allowed therefrom.

SEC. 10. The clerks of the circuit courts when requested, may issue executions directed to the sheriff of any county within this state, whose duty it shall be to obey and execute the same, and due return thereof to make to the office from which it issued, agreeably to the provisions of this act; and in all cases, where any personal estate shall be levied on by virtue of the provisions of this act, the sheriff or other officer may, and he is hereby authorized to take bond with such security as shall be sufficient, in double the amount of the personal estate levied on, payable to the execution plaintiff; conditioned that such personal estate so levied on, shall be well and truly delivered to such officer, at such time and place as shall be named in such condition to such bond, to be by such officer sold according to law; which bond shall be, by such sheriff or other officer, returned into the office from whence such execution issued, and shall be valid in law, and an action may be had thereon, whenever the condition thereof shall be broken; and on judgment being rendered thereon, ten per centum in damages, together with interest and costs, shall be given on the amount of the principal of said judgment, and on which judgment, execution shall issue, and be returnable in thirty days from the date thereof; and upon such execution, no delivery bond whatever shall be taken by the officer executing the same.

SEC. 11. That if any person against whom any judgment may have been, or hereafter may be rendered in any court on any debt, contract or cause of action, shall enter such bail as shall be deemed sufficient security for the amount of said judgment, interest and costs, and shall have the same entered on the docket of the justice, or on the record of the court that gave such judgment, such person shall have stay of execution, if the sum shall not exceed six dollars, thirty days; if over six and not exceeding twelve dollars, sixty days; if over twelve and not exceeding twenty dollars, ninety days; if over twenty and not exceeding forty dollars, one hundred and twenty days; if over forty and not exceeding one hundred dollars, one hundred and fifty days; and if over one hundred dollars, one hundred and eighty days.

SEC. 12. On all executions which may hereafter issue against the goods, chattels, lands, and tenements of any justice of the peace, clerk of the circuit court, sheriff, treasurer, trustee of the seminary fund, collector or attorney, on any judgment, for any money by them collected, or otherwise got into their hands by reason of their office, or against the goods and chattels, lands and tenements of any individual, or chartered bank, for money deposited with them, their and

Clerks may issue executions directed to the sheriffs of any county within the state.

Sheriff may take delivery bond.

Ten per cent damages for breach of.

Stay of execution.

No stay of execution on certain judgments.

each of their real and personal estate, shall sell for the best price it will bring; and such execution shall be returnable in thirty days from the date thereof.

Judgments in circuit courts made liens in the counties where rendered.

Also copies of judgments in the counties where filed.

Ca. sa. when to issue.

Defendant in custody, may be discharged by delivering property.

SEC. 13. Judgments in the circuit courts, are hereby made liens on the real estate of the defendant or defendants, from the day of the rendition thereof, in the county where such judgment may be rendered; and it shall be the duty of the several clerks of the circuit court, when applied to by any person interested in any judgment rendered by any of the courts aforesaid, to make out and deliver to such applicant, an attested copy of the record of such judgment, under the seal of the court, for which such clerk shall receive fifty cents; which said attested copy, may be by such person filed in the clerk's office of any of the circuit courts in this state; and when so filed, the clerk of such court shall record the same, on the records of the court, for which such clerk shall receive the same; and such attested copy when so filed, and entered on the records as aforesaid, shall operate as a lien upon the real estate of the defendant or defendants in such judgment, in the county where it is so filed and recorded, from the day of filing and recording the same, in the same manner and to the same legal extent it would have done, had it been originally rendered in such county; but no execution shall ever issue on the said attested copy or record thereof aforesaid, but the record of the same shall have the same force and effect in every other point of view, as any other record of any such court may or can have.

SEC. 14. Whenever hereafter, any writ of execution may or shall issue against the goods and chattels, lands and tenements of the execution defendant or defendants, and shall be returned no property found, out of which to raise money to satisfy such execution, it shall be lawful for the clerk, on application of the plaintiff, by himself or attorney, to issue the writ of capias ad satisfaciendum, against the defendant or defendants, according to the usage and customs of courts, respecting the same; and such defendant or defendants when taken on such writ, while in the hands of such officer, and before being put into prison, or at any time after he, she, or they may be put into prison on the same, may discharge himself, herself, or themselves therefrom, by delivering a sufficiency of property, either real or personal, to the proper sheriff or other officer, to discharge the debt or damages, and the interest and costs due on such writ of execution, or by delivering all the property both real and personal, of which he, she, or they may be possessed, which may be subject to execution, together with all monies and effects; and solemnly swearing before such sheriff or other officer, that he, she, or they, have no more property either real or personal, subject to execution; or monies or effects in their possession or control, or in the possession or control

of any other person or persons, for the use of such defendant or defendants; and that he, she or they, have neither directly or indirectly disposed of, transferred or concealed any of their property, monies or effects, with an intention to defraud his, her or their creditor or creditors; or if any such defendant or defendants have no property, either real or personal, subject to execution, or monies or effects, he, she or they may discharge themselves therefrom, by swearing before such sheriff or other officer, that he, she or they have no property, either real or personal subject to execution, or monies or effects in his, her or their possession or control, or in the possession or control of any other person or persons, for his, her or their use; and he, she or they have not, either directly or indirectly disposed of, transferred or concealed any of their property, monies or effects, with an intention of defrauding their creditor or creditors; and in case any such defendant or defendants avail himself, herself or themselves, of the provisions of this section of this act, and shall bring himself, herself or themselves, strictly within either of the provisions of this section, the sheriff or other officer, shall thereupon discharge such defendant or defendants from further imprisonment on such suit.

Defendant in custody, how discharged.

SEC. 15. Any officer legally authorized to serve any such writ of capias ad satisfaciendum, is hereby legally empowered to administer, any and all the oaths mentioned in the last foregoing section; which said oath or oaths, when so administered by such officer, shall be reduced to writing; and the party making the oath, shall swear to and sign the same; and such oath when so signed and sworn to, such officer shall return with such writ of execution, to the office from whence the execution issued; making such oath a part of the return to such writ, which shall be a legal and available return for such officer; and if any such oath or oaths, or any part thereof be false, the person or persons who made and took such oath or oaths, shall on conviction thereof by indictment, be deemed guilty of perjury, and suffer the pains and penalties thereof, and be subject to imprisonment again, as though he, she or they never had been imprisoned.

Officer serving writ, may administer oath.

SEC. 16. That hereafter, if any person or persons being a prisoner or prisoners, charged in execution on capias ad satisfaciendum shall die, the party at whose suit such person or persons were in execution, may sue forth a new execution, as lawfully and in the same way and manner as he, she or they might have done, had said capias ad satisfaciendum never issued.

Prisoner on ca. sa. dying, plaintiff may sue forth a new execution.

SEC. 17. That whenever any execution defendant or defendants, shall or may so as aforesaid discharge himself, herself or themselves from imprisonment, on any such writ of capias ad satisfaciendum, by delivering property as afore-

Property delivered on ca. sa. may be sold by the sheriff.

Execution.

said to the sheriff or other officer, it shall be the duty of such officer, to immediately proceed to dispose of such property, agreeably to the provisions of this act, on said writ of capias ad satisfaciendum, in the same manner as though it had been executed against the goods and chattels, lands and tenements of such defendant or defendants; and had been by such officer duly levied on such property, and make due return of all his proceedings thereon.

SEC. 18. When default or defaults shall be made or suffered by any mortgagor or mortgagees, of lands, tenements or hereditaments, or by his, her or their heirs, executors, administrators and assigns, of or in the payment of the mortgage money, or performance of the condition or conditions, which they or any of them should have paid or performed, or ought to pay or perform, in such manner and form, and according to the purport, tenor and effect of the respective provisions, conditions or covenants, comprised in the deeds of mortgage or defeasance, and at the days, time and places, in the same deeds respectively mentioned and contained in any purchase, it shall and may be lawful, to and for the mortgagee or mortgagees, and him, her or them, that hold the said deed of defeasance, and his, her or their heirs, executors, administrators or assigns, any time after the expiration of twelve months next ensuing the last day, whereon the said mortgage money ought to be paid, or other conditions performed as aforesaid, to file his, her or their bill, in the proper circuit court, according to the course of the common law, praying said court to foreclose the equity of redemption to said mortgaged premises; and the said circuit court shall, having jurisdiction thereof, make such equitable decree between the parties, as shall be right and just; and the said mortgaged premises, if ordered to be sold by said court, shall sell for the amount of the debt or damages at least, which the said mortgage deed was intended to secure; and the overplus, if any, shall be returned to the mortgagor; and if the said mortgaged premises, should not on being exposed, sell for a sufficient sum to pay the said debt or damages, interest and costs, then the said mortgaged premises shall be delivered to the mortgagee, in full satisfaction thereof, costs excepted; and when the said lands and hereditaments shall be sold or delivered as aforesaid, the person or persons to whom they shall be sold or delivered, shall and may hold and enjoy the same, with their appurtenances; and such estate or estates, shall be discharged and free from all equity and benefit of redemption, and all other incumbrances made or suffered by the mortgagees, their heirs or assigns; and such sales shall be available in law, and the respective vendees, mortgagees and creditors, their heirs and assigns, shall hold and enjoy the same, free and discharged as aforesaid: but before such

Mortgage,
how foreclosed.

Premises shall
sell for the
amount of the
debt or damages.

Or delivered
to the mortga-
gee in full sa-
tisfaction
thereof.

Execution.

sale shall be made, notice shall be given in writing, in manner and form as is herein above directed, concerning the sale of lands upon execution, any law or usage to the contrary notwithstanding.

SEC. 19. When any of the said lands, tenements or hereditaments, which by the direction and authority of this law are to be sold for the payment of debt and damages, in manner aforesaid, shall be sold for more than will satisfy the same, and reasonable costs, then the sheriff or other officer who shall make the sale, shall render the overplus to the debtor or defendant; and then, and not before, the said officer shall be discharged thereof, upon the record, in the same court to which he shall make return of his proceedings, concerning the said sales.

SEC. 20. No sale or delivery which shall be made by virtue of this law, shall be construed to create any further term or estate to the vendees, mortgagees or creditors, than the lands or hereditaments so sold or delivered, shall appear to be mortgaged for, by the said respective mortgagees or defeasible deeds.

SEC. 21. If any of the said judgments, which do or shall warrant the awarding of the said writ of execution, whereupon any lands, tenements or hereditaments have been or shall be sold, shall at any time be reversed for error or errors, then none of the said lands, tenements or hereditaments, so as aforesaid taken and sold, nor any part thereof shall be restored, nor the sheriff's sale or delivery thereof be avoided; but restitution in such case shall be made only, of the money or price for which such lands may or shall have been sold.

SEC. 22. That any sheriff or other officer, into whose hands any execution may be placed for the collection of any debt, damages or costs, and who shall neglect or fail to return the same, on the proper return day thereof, or to pay over the money collected upon any such execution, shall on motion before the circuit court of the proper county, or the supreme court, as the case may be, ten days notice having been previously given of such intended motion, be subject to pay the full amount of any such debt, damages, interest and costs, or money collected, together with full costs of suit, and ten per centum in damages thereon; for all of which the court is hereby required and enjoined, to render judgment against such officer, unless such officer can shew satisfactory cause, why judgment ought not to be rendered against him, to be judged of by the court; upon which judgment, execution shall be issued against such officer, returnable in thirty days from the date thereof; or suit for such failure may be sustained against such sheriff or other officer and his securities, upon his official bond; and judgment be

Overplus of
sales to be
paid to the
defendant.

Sale not void
on reversal of
judgment.

Penalty on of-
ficers failing to
return execu-
tion.

Fees.

had thereon for the debt, damages and costs above mentioned.

Return days,
not exceeding
four in each
year.

SEC. 23. That the return days of executions shall be fixed by the several courts, from which the same may issue, at the first term of their respective courts after the publication of this act, which shall be recorded, and shall not exceed four in each year.

CHAPTER XLI.

An Act regulating the Fees of the several officers and persons therein named.

[APPROVED, JANUARY 30, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the officers and persons herein mentioned, shall be entitled to receive for their services, the fees hereby allowed, and no other.

Clerks' fees in the Supreme Court.

Clerk of the supreme court	Every writ of error and seal	\$ 00 75
	Every summons thereon	" 50
	Endorsing on writ of error that it is to operate as a supersedeas	" 06
	Endorsing same on summons	" 06
	A bond given by the plaintiff when not a freeholder and resident of the state	" 37 1-2
	Filing writ and each paper in a cause	" 06
	Copy of a record or other papers, per sheet of 100 words	" 12 1-2
	Discontinuance or retraxit	" 12 1-2
	Copy of every rule when required	" 12 1-2
	Bringing a particular record into court	" 25
	Entering satisfaction of record	" 12 1-2
	Receiving and entering verdict	" 12 1-2
	An execution	" 50
	Entering defendant's appearance	" 06
	Entering on docket	" 12 1-2
	Entering judgment	" 15
	Subpoena, to include all the witnesses that may be called for at any one time	" 50
	Swearing each witness	" 06
	Swearing each constable or bailiff	" 06
	Making up and entering a complete record after judgment, per sheet of 100 words	" 12 1-2
	Searching the record within one year	" 12 1-2

Fees.

Every year back	\$ 00 06
On confession of error, judgment or default	" 25
Continuing cause	" 20
Every issue joined	" 25
Issuing commissions to take depositions	" 50
Entering any principal motion	" 10
Every writ of supersedeas or certiorari and seal	" 75
Certificate and seal	" 50
For a bond on a supersedeas	" 75
Making out advertisement for non-resident defendant in error	" 50
Issuing an attachment for contempt	" 50
Every writ of elegit, venditioni exponas, and other special writs not provided for	" 50

Clerks' fees in the Circuit Court in civil causes.

Every writ of capias and seal	\$ 00 50	Clerks of the circuit courts in civil cases.
Entering action	" 06	
Filing writ	" 06	
A bond given by the plaintiff when not a freeholder and resident of the state	" 18 3-4	
Filing declaration or other pleadings	" 06	
Copy of declaration or other pleadings when required, for each sheet of 100 words	" 12 1-2	
Altering a declaration in ejectment and admitting defendant	" 25	
Entering any motion and rule thereon	" 12 1-2	
Discontinuance or retraxit	" 12 1-2	
Copy of every rule when required	" 12 1-2	
Bringing a particular record into court	" 12 1-2	
Entering satisfaction of record	" 12 1-2	
Receiving and entering verdict	" 12 1-2	
Entering judgment	" 15	
Reading and allowing every writ of habeas corpus or certiorari and the return	" 25	
An execution	" 50	
Transcript of record in error, on appeal, and returning it with the writ, per sheet of 100 words	" 12 1-2	
Entering defendant's appearance	" 06	
Every writ of enquiry, per sheet of 100 words	" 12 1-2	
Entering on docket	" 12 1-2	
Receiving and entering the traverse pannel and swearing the jury	" 37 1-2	
A subpoena to include all the witnesses that may be called for at one time	" 50	
All other writs not herein provided for	" 50	
Swearing each witness	" 06	
Swearing constable or bailiff	" 06	
Filing each document not otherwise provided for	" 06	
Making up and entering a complete record af-		

Fees.

ter judgment, per sheet of 100 words	\$ 00 12 1-2
Copy of a record when required, per sheet of 100 words	" 12 1-2
Searching the record within one year	" 12 1-2
Every year back	" 6
Entering report of referees, per sheet of 100 words	" 12 1-2
On confession of judgment, default, joinder, or demurrer	" 20
Entering rule of court on appointing referees	" 15
Continuing each cause	" 20
On surrendering the principal in court by sureties	" 15
On entering each principal motion	" 10
Every issue joined	" 25
On drawing special list of jury, attending striking and making copies of jury list for plaintiff or defendant	" 50
Making out advertisement for a non-resident defendant in chancery, or on libel for a divorce	1 00
Issuing commissions to take depositions	" 50
For a marriage license, and recording a certificate of marriage	1 00
Recording a certificate of an estray and advertising same on court house door	" 50
Every writ of ad quod damnum	" 1 00
Sealing weights and measures each	" 12 1-2
Each writ of subpoena in chancery, and writ of injunction	" 50
Copy of writ of subpoena	" 37 1-2
Issuing an attachment for contempt under the seal of the court	" 50
Every writ of elegend and other special writ not provided for	" 50
For every writ of venditioni exponas, and scire facias	" 50
And for every 100 words of the record transcribed in such writs	" 12 1-2
For recording certificate of marriage when no license has been granted	" 50
Summons in lieu of capias	" 50
Tavern license and bond	1 00
For examining every account in court	" 10
Entering writ of error or certiorari from the supreme court	" 12
Every trial	" 25
Certificate and seal	" 50
Reading and entering each order	" 10

Provided, that where any nolle prosequi, or discontinuance is entered by a prosecuting attorney, or by the plain-

Fees.

tiff in any action, or where a nonsuit is suffered, it shall not be necessary to make a record of the same.

Clerks' fees in Criminal Proceedings.

	In criminal cases.
Taking a recognizance and drawing it up in form	\$ 00 37 1-2
For engrossing every indictment, filing and reading the same	" 56
Subpoena to include all the witnesses that may be called for at one time	" 50
A venire, or other writ	" 50
Entering defendants appearance	" 06
An execution	" 50
Making up record per sheet of 72 words	" 18 3-4
Copy of record when required per sheet of 72 words	" 12 1-2
Every order or rule of court	" 09
Filing record	" 12 1-2
Entering the pannel and swearing the jury	" 25
Swearing each witness and constable	" 06
Reading each order, summons or petition in court	" 06
Taking and entering the verdict	" 12 1-2
Entering the verdict and fine	" 15
Entering the defendants confession	" 15
Copies of indictments and pleadings if required per sheet of 72 words	" 12 1-2
Discharging a recognizance	" 10

Probate fees.

For all copies per sheet of 100 words	" 12 1-2 Probate fees.
For administering an oath	" 06
For filing	" 06
For a citation	" 50
For letters of administration	" 75
For taking and filing a renunciation, and taking proof thereof	" 50
For proving a will, endorsing a certificate thereon, recording the same, and filing it	1 00
For qualifying administrator, taking bond and writing certificate	1 00
For filing caveat	" 12 1-2
For proving codicil, if proved separately, endorsing certificate, recording the same, and filing it	1 00
For recording and examining an inventory or account, per sheet of 100 words	" 12 1-2
For granting the administration with the will annexed	1 50
For settlement of accounts of executor or administrator	" 50

Fees.

For every copy of said account not exceeding 100 items, with the certificate and seal	\$ 00 75
Reading and filing petition to sell land, and swearing the administrator to the truth of the statement made, and entering the necessary orders thereon, per sheet of 100 words	" 12 1-2
Giving notice by order of the court for sale of land for every advertisement not exceeding three.	" 25
For entering up an order for the appraisers of decedent's estate	" 12 1-2

Sheriffs' Fees.

Sheriffs' fees.	
For serving a writ and taking into custody	" 50
For every mile in going to serve process	" 06
For taking bail	" 25
For taking a recognizance and drawing it up in form	" 37 1-2
For returning every writ	" 10
For summoning a jury	" 75
For attending a review per day	1 00
For going to and returning from do.	1 00
For serving and returning a scire facias	37 1-2
For serving a writ of possession with the aid of the posse comitatus	2 50
For serving such writ without the aid of the posse comitatus	1 25
For calling a jury in each cause	" 12 1-2
For every person committed to the common jail	" 37 1-2
For calling every witness	" 06
For discharging every person out of the common jail	" 37 1-2
For holding an inquisition, drawing up and returning the same	1 50
For discharging every person by proclamation	" 10
For serving a summons	" 37 1-2
For attending a prisoner before a judge when surrendered by his bail, and receiving the prisoner into custody	" 50
For dieting a prisoner per day	31 1-4
For selling property on an execution, a commission of five per centum on the first \$300, and two per centum on all sums above that amount; but when the money is paid without seizure, one half of those commissions only shall be allowed.	" 75
For taking a valuation of lands	" 75
For taking a replevy bond	" 75
For serving a ca. sa.	1 00
For levying on property without sale, and the	

Fees.

expense of advertising the same	\$1 00
Mileage as above when no money is made, and no other fee or reward shall be allowed on executions, except for the expense of keeping property.	
For serving distress warrant	" 50
For making a deed on sales of real estate on execution	2 00
Serving a foreign or domestic attachment	" 50
Returning do.	" 25
For postage paid on letters received from or directed to the clerk of the supreme court, enveloping process issued by said court, the amount thereof to be returned as a distinct item of charge.	
In criminal cases not provided for, the like fees as for services in civil causes.	

Jurors' Fees.

Every juror sworn in each action in the supreme or circuit courts	" 37 1-2
Every juror attending a view per day	" 50
Every juror attending before a justice for trial	" 25
To every grand juror sworn, per day, a credit of one days labour on public roads and highways in their respective townships.	

Jurors' fees.

Witnesses' Fees in the Supreme and Circuit Courts.

To every witness attending in his own county on trial, per day	\$00 50
To every witness attending from another county, and going and returning each day	1 00
To each witness subpoenaed in the county, and detained from another county, each day	1 00

Witnesses' fees.

Witnesses' Fees before a Justice.

Attending per day	" 25
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Prosecuting Attorneys' Fees.

For every conviction upon an indictment or presentment	5 00
On each application for divorce, where the same is not granted, to be paid by the applicant	3 00

Prosecuting attorneys' fees.

Coroners' Fees.

Empanelling and swearing a jury and witnesses, and making and returning inquisition for the view of each body	5 00
The fees of an inquest to be certified by the coroner and paid out of the county treasury. For all duties he shall perform when acting as sheriff, the same fees as are allowed to sheriffs in similar cases.	

Coroners' fees.

*Fees.**Recorders'.*

<i>Recorders' Fees.</i>		
For recording a deed or mortgage		\$1 00
Recording a bond		" 50
Recording a promissory note		" 25
Recording all other instruments per sheet of 100 words		" 12 1-2
Copies of all records and certifying the same per sheet of 100 words		" 12 1-2
Recording town plats and additions thereto, for every 100 lots and under		" 12 1-2
Every lot over one hundred, each	2 00	" 01

Fees of the Secretary of State.

For copies of records and papers per sheet of 100 words	" 12 1-2
For every certificate and seal	" 50
For every pardon or remission of fine	1 00

*Attorneys and Counsellors' Fees in the Circuit Courts.**Attorneys and counsellors in circuit courts.*

In all civil actions at law, where the title of land does not come in question, to be taxed with the costs, in favour of the party gaining the suit	\$2 50
In all civil actions where the title of land shall come in question in suits in chancery, to be taxed with the costs in favour of the party gaining the suit	5 00

*Attorneys and Counsellors' Fees in the Supreme Court.**In supreme court.*

For every appearance to a cause on appeal or writ of error, to be taxed with the costs, in favour of the party gaining the suit	\$10 00
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Surveyors' Fees.

For going to and returning from a view per day, and for every thirty miles going to and returning from the same	1 25
For his actual service on the view per day	1 50
For going to, attending the court and returning per day	1 25
For every survey by him plainly bounded, as the law directs, and for a plat of such survey, after the delivery of such plat, where the survey shall not exceed four hundred acres of land	3 00
For every 100 acres of land contained in one survey above four hundred acres	" 25
For surveying a lot in town	1 00
For every additional lot surveyed at same time	" 25
For a survey began by him, which he is stopped or hindered from finishing, to be paid by the party requiring the survey	2 62
For running a dividing line, one mile or under	1 25

Fees.

And all division lines which may be run to divide any of the lands sold by the United States, shall be made agreeably to the laws of the United States, directing the mode of surveying the public lands.

For surveying an acre of land for a mill \$1 50

For every survey of land formerly patented, and which shall be required to be surveyed, and for a plat thereof delivered as aforesaid, the same fee as for land not before surveyed; and where a survey shall be made of any lands, which are to be added to other lands in an inclusive patent, the surveyor shall not be paid a second fee, for the land first surveyed, but shall only receive what the survey of the additional land shall amount to. And where any surveys shall have been actually made of several parcels of lands adjoining, and several plats delivered, if the party shall desire one inclusive plat thereof, the surveyor shall make out such for 1 50

For running a dividing line between any counties or townships, to be paid by such counties or townships, in proportion to the number of taxable inhabitants, if ten miles or under 10 50
" 30

And for every mile above ten
For receiving a warrant of survey, and giving a receipt therefor " 18 3-4
For a copy of a plat of land or a certificate of survey " 25

Fees of Justices of the Peace.

Justices of the peace.
For every investigation of a criminal information on oath " 50
Swearing each witness " 06 1-4
For every warrant or other process in a criminal case " 25
Every bond or recognizance " 25
Every precept for forcible entry and detainer " 25
Every trial for forcible entry and detainer 2 50
Writing and signing every attachment " 25
Taking an acknowledgment of a deed or a power of attorney " 25
Order for relieving a pauper " 25
Order for removing a pauper " 50
Issuing a scire facias " 25
Certifying description of a boat adrift or estray " 25
Warrant and certificate of appraisement " 25
Taking and certifying depositions " 25
And for each hundred words therein contained more than 100 " 12 1-2
For each process required by law in civil cases,

Fees.

and not herein enumerated	\$0 12 1-2
For every writing or record not herein provided for, every hundred words	" 12 1-2
Every trial and entry of judgment	" 25
Entering judgment by default or confession	" 12 1-2
For certified copies of all proceedings for each 100 words	" 12 1-2
Entering each rule of reference or continuance	" 12 1-2
Every bond or recognizance of bail	" 25
Every deditus	" 25
Every precept for summoning jury	" 12 1-2
Entering verdict of such jury	" 12 1-2
Each transfer of judgment	" 12 1-2
Issuing an execution	" 12 1-2
Suspēna for witnesses to include all that are cal- led for at one time	" 25

Constables' Fees in Civil cases.

Constables in civil cases.	For serving a summons or warrant on each per- son named therein	" 25
	Travelling to serve process, per mile	" 04
	When two or more are named in such process, milage shall be allowed to the place of actual service, the most remote from the place where such process is returnable.	
	A copy of the process left at the defendant's resi- dence	" 12 1-2
	Serving a subpoena for each person therein named	" 12 1-2
	Returning each warrant, summons and scire facias	" 05
	Bail bond	" 25
	Serving execution and mileage as above	" 25
	Commitment to prison	" 25
	Sale of goods when the amount does not exceed six dollars	" 25
	On all sums above six dollars, 5 per centum.	
	On all monies collected on execution without sale, half the above commissions.	
	Returning the same	" 10
	For summoning jury in any case	" 25
	Attending jury trial before justice	" 12 1-2

Constables' Fees in Criminal cases.

In criminal cases.	For serving a capias on each person named therein	" 50
	Serving a Subpēna	" 20
	Travelling to serve process, per mile	" 04
	Attending an examination of a person charged with a crime	" 20
	If more than one, an addition for each	" 05
	Commitment of each person	" 25

Sec. 2. That the allowance made by this act, to the clerks
and sheriffs of the circuit courts of the several counties, for

Fees.

extra services, shall be taken and deemed as a full compen-
sation to those officers, for all services, to which no specific
fee is, or shall be given by law.

SEC. 3. To the end that all persons chargeable with any
of the fees aforesaid, due to the several officers, may know
for what the same are charged; none of the fees herein be-
fore mentioned, shall be payable to any person whatsoever,
until there shall be presented to the person, chargeable with
the same, a bill in writing, containing the particulars of Fee bill,
such fees, made out and signed by the clerk, or officer, to
whom such fees shall be due, or by whom the same shall be
chargeable respectively: On which said bill or account,
shall be expressed in words at full length, and in the same
manner, as the fees aforesaid are allowed in this law, every
fee for which any money is or shall be demanded.

SEC. 4. And whenever hereafter a cause may and, shall
be decided, or be dismissed by a plaintiff, or when the stay
which now is, or may hereafter be granted by law, on judg-
ments before justices of the peace shall have expired, it
shall be lawful for such justice to issue his fee bill, and place
the same in the hands of the constable of his county, to be Justice may
collected and paid over, in the same manner, as is now pro-
vided by law for the collection of other fees: But no charge
or demand shall be made by any officer, for making out a
fee bill or copy thereof, any law or custom to the contrary
hereof in any wise notwithstanding.

SEC. 5. The clerks of the supreme and circuit courts,
shall set up in some public place in their offices, and there
constantly keep, a fair table of their fees, on pain of forfeit- Table of fees
to be set up.
ing forty dollars, for every court day the same shall be miss-
ing through their neglect; which penalty shall be to the use
of the person who shall inform or sue for the same, and may
be recovered in the circuit courts of this state by action of
debt or indictment.

SEC. 6. Any officer who shall claim, demand, or take, any
more or greater fees, for any services by him done, within
the purview of this act, than herein before set down, shall
forfeit and pay to the party injured, besides such fee or fees,
treble the value of the sum extorted, for every particular
fee so unjustly charged, demanded, or taken, to be recover-
ed with costs in any court having cognizance thereof, by ac-
tion of debt; provided the same be sued for within two
years after the offence shall be committed.

SEC. 7. The clerks of the circuit courts, recorders, coun-
ty surveyors, and witnesses, may at any time after their said
fees shall have become due, make out their fee bills, (stat-
ing each item particularly and the amount thereof,) which Clerks, &c.
make out fee
bills,
shall be signed by said clerks, recorders, or surveyors, as
the case may be; and the certificate of the witnesses' fees
shall be signed by the proper clerk, and deliver the same

Fees.

to the sheriff of the proper county, who is hereby required and enjoined to receive the said fee bills, and proceed to collect the same as hereinafter directed.

Sheriff to collect fee bills.

SEC. 8. The said sheriffs are hereby required and empowered to receive such accounts or fee bills, and proceed to levy and collect the several sums of money therein charged, from the person chargeable therewith, or liable to pay the same, within one month after the same shall have been placed in his hands for collection; and if such person or persons owing such fees shall neglect, refuse, or delay to pay the same within one month as aforesaid, the sheriff in whose hands the fee bills are so placed or put, shall have full power and authority, and he is hereby strictly enjoined and required to proceed to make distress of the goods and chattels of such delinquent person, so refusing and neglecting to make payment, either in the county in which such person resides, or in which such goods and chattels may be found; and the sheriffs of the several counties of this state, into whose hands any of the said fee bills shall have been placed, to collect as aforesaid, shall within one month after receiving the fee bills as aforesaid, proceed to collect the same, by distress and sale of goods and chattels of the party owing such fees as aforesaid; and for want of goods and chattels belonging to such delinquent, then of the lands and tenements of such delinquent, in the same manner, and by giving the same notice by advertisement, as is required by sale on execution. But no action shall be had or maintained on any fee bill due to, or owing to any of the persons aforesaid, so long as the party owing the same, shall reside within the jurisdiction of this state; and the same proceedings shall be had against the person or persons who may by bond have become security for costs for any other person or persons, as is herein provided against the principal; and the said sheriff for collecting all such fee bills as aforesaid, shall charge and be allowed six per centum on the amount of each and every fee bill placed in his hands for collection, to be paid by the person owing such fees; and no other fee or reward shall be allowed the said sheriff for such collection: and if the said sheriff shall be sued for any thing by him done in pursuance of this act, he may plead the general issue, and give this act in evidence.

Six per cent. for collection.

Sheriffs to account in three months, or be moved against

SEC. 9. Every sheriff of each county in this state, shall within three months after having received the aforesaid fee bills of any of the persons as aforesaid, account with said persons respectively, to whom the said fees may be due; and if any sheriff shall refuse to account with and pay over to the several persons to whom the same may be due; deducting such fees as are due by persons not residing within or having no visible property or estate in his county; it shall be lawful for the clerk of the supreme court, the clerks

Fees.

of the several circuit courts, the recorder, surveyor, or any witness to whom fees may be due as aforesaid, for services rendered as aforesaid, their heirs, executors or administrators, upon a motion made in the next succeeding session of the supreme court, for fees due therein, or upon motion in the circuit for fees due therein, or due to any sheriff of any other county, any recorder, surveyor or witness, to demand judgment against such sheriff so neglecting, or his securities; and such courts respectively, are hereby required to enter up such judgment accordingly: *Provided*, such sheriff or his securities, shall have ten days notice of such intended motion; and judgment shall also be entered up against the said sheriff and his securities, for the costs of such motion, unless such sheriff or other person shew good cause to the contrary, and no replevin shall be allowed to such sheriff or his securities on any such judgment.

Ten days notice.

SEC. 10. The executors or administrators of such sheriff or under-sheriff, shall be liable to a judgment as aforesaid for fee bills received; to be collected by their testator or intestate, and not accounted for, as far as assets may be found in their hands. Every receipt produced in evidence, on any such motion, shall be deemed to be the act of the person subscribing it, unless he shall deny the same on oath.

SEC. 11. Sheriffs' per centum and all other legal fees in a suit from final judgment to execution, shall by the sheriff be levied out of the estate and effects of the person against whom such execution shall be issued.

SEC. 12. The board of county commissioners shall annually allow the clerk and sheriff of such county, such compensation for their extra services, as they may think reasonable, not exceeding seventy dollars each; which annual allowance shall be considered a full compensation for all extra services rendered the board of county commissioners, and the circuit court of such county.

Commissioners' allowance to clerks and sheriffs.

SEC. 13. That each circuit court, if question arise concerning any bill of costs, shall upon motion of any party interested therein, and reasonable notice thereof, determine according to the rights of the parties thereto, and make order accordingly; and whenever there shall appear a claim for official services rendered by any officer of a court of justice, and there does not appear to be any fee fixed by law as a compensation therefor, the court on application, shall make order, specifically fixing the allowance for such claim, having due regard to the comparative value of such service; and all such cases, the president of the several judicial circuits shall report to the next general assembly.

Circuit courts determine costs.

CHAPTER XLII.

An Act to establish and regulate Ferries.

[APPROVED, JANUARY 14, 1824.]

County commissioners to establish ferries.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the several boards of county commissioners within this state, shall be and are hereby empowered to establish public ferries across those rivers or creeks bounding or within their respective counties, whenever they shall deem it necessary, on due application to them made; but no such ferry shall be established, unless the person making such application be the proprietor of the land on that side of such river or creek, on which he wishes to have such ferry established: *Provided*, nothing herein contained shall be so construed, as to authorize the board of county commissioners to grant a ferry within one mile immediately below or above a regularly established ferry, unless they shall deem it important for the public convenience, or the intervening of a town, village, public highway, or the putting in of some impassable creek or ravine.

How established on water courses dividing counties.

Owner of land refusing to establish a necessary ferry, license may be given to another person.

Owner of land entitled to possession of such ferry, paying expenses, &c.

SEC. 2. When any river or creek shall be the boundary line between two counties, and any person owning lands on either side of the said river or creek, shall wish to have a public ferry across the same, he or she shall apply to the board of county commissioners, of the county in which his or her land lies, who are hereby authorized to establish such ferry from the land of such person to the opposite side; and when any person being the owner or holder of any land lying on any river or creek, within or bounding on this state, where any public road may cross the same, and where the public convenience may require that a ferry should be kept, shall neglect or refuse to have a public ferry established within a reasonable time, in such case it shall be lawful for the commissioners of the county, in which it may be necessary to have such ferry established, after having given three months public notice of their intention by advertisement, to grant a license to some person to keep a ferry at such place, and on such conditions as to them may appear reasonable and just, taking bond and security as prescribed in this act; and any person having obtained a license from the board of commissioners as aforesaid, shall be and they are hereby authorized and empowered to keep such ferry so established, and also to occupy as much ground as may be necessary to receive and discharge passengers, not exceeding one hundred rods on each side of the creek or river, as the ferrymen may deem sufficient and necessary; provided that the owner of the land where such ferry may have been established, may demand and take possession of any such ferry on his or her tendering to the holder of such ferry, the full

value of all the boats and other craft, which may have been necessarily employed for the transportation of passengers, with all other expenses which may have accrued in digging the banks, or otherwise improving the ferry, and ten per centum thereon, giving also to the board of county commissioners a bond as described in this act; which bond shall be a complete release from the obligations contained in the bond previously given by the holder of such ferry.

SEC. 3. Where the land bordering on any creek or river across which a public ferry is deemed necessary to be established, shall be a public common for any town, the board of county commissioners for the county, are hereby authorized to establish ferries across such river or creek, on application of any person owning land next adjoining such public common, under the rules and restrictions that ferries are established to persons owning land bordering on such river or creek: *Provided* that nothing in this act, shall be so construed as in any wise to affect any town or corporation, or the right of any person or persons, proprietor or proprietors of any town, their heirs or assigns, by giving the right of establishing a ferry or ferries to any person or persons who are not proprietors of the land on the margin of the river or creek; provided the corporation of such town, or the proprietor or proprietors of such land, keep up a sufficient number of ferries across such river or creek.

To whom ferry granted, where land adjoining water course is a common.

Proviso, as to corporations and proprietors of towns.

Notice of application for a ferry, 30 days.

SEC. 4. No application shall avail any person wishing to establish a public ferry across any river or creek, unless he shall previously have advertised his or her intentions relative thereto, at three of the most public places of the township, in which such ferry is proposed to be established, at least thirty days.

SEC. 5. If any person shall think himself or herself aggrieved by the establishment or vacation of a public ferry, by the board of county commissioners, under this act, he or she, shall have the right of appeal to the circuit court of the Appeal proper county.

SEC. 6. The rates of ferries shall be fixed by the board of county commissioners, at the time of establishing the same, and from time to time, as they shall deem proper.

SEC. 7. If any ferry-keeper shall demand or take from any person, a greater sum for the ferriage, than is allowed by the board of commissioners, such offender shall forfeit and pay upon indictment or presentment, any sum not exceeding forty dollars, to be appropriated as other fines are. Extortion.

Commissioners order as to the number of boats and hands.

SEC. 8. The board of county commissioners for the county wherein a ferry is or shall be established, shall have authority of ordering and directing from time to time, what boat or boats, and the number of hands which shall be kept at each ferry respectively; and the owner of the land whereon such ferry shall hereafter be established, shall within

Owner of land
give bond.

three months from the establishment of such ferry, execute a bond to the board of county commissioners, with one or more securities to be approved of by the board of county commissioners, in the penal sum of five hundred dollars, conditioned that he or she will keep such ferry, or cause the same to be kept, according to law; and that he or she will give passage to all public messengers and expresses when required, without fee or reward for the same, from time to time; which bond shall be filed with the clerk of the board of county commissioners, to be proceeded on in the same manner, as other public bonds for the breach of the condition thereof; and in case any such person shall refuse or neglect to give such bond, he or she shall forfeit his or her right to said ferry.

Expresses,&c.
pass free.

SEC. 9. All expresses sent on public service by a commander in chief, colonel, or major, to the governor for the time being, or commanding officer of the militia, shall be accounted public messengers and expresses, and shall pass ferry free within the condition and meaning of the bond aforesaid, in case the despatch carried by such express be endorsed, public service, and signed by the person sending the same.

Good boats &
ferrymen to
be kept.

SEC. 10. Each and every ferry-keeper, shall keep a good and sufficient boat or boats, if more than one be required, with a sufficient number of good and skilful ferrymen, and give due attendance to the said ferry or ferries, and the transportation of all persons with his or their property, who shall apply for the same during the day time, that is to say, from day light in the morning, until dark in the evening, that no unnecessary delay may happen to persons having occasion to use the same; but all ferry-keepers shall be obliged at any hour in the night if required, except in case of evident danger, to give passage to all expresses above recited, and to all other persons requiring the same, on their tendering and paying double the rate of ferriage allowed to be taken during the day time; and it shall be the duty of all ferry-keepers within this state, to cause the banks of the river or creek to be dug sufficiently low, and kept in good passable order for the passage of man and horse and loaded wagons.

Expresses to
pass at any
time of night.

Bank to be
kept in good
repair.

Ferrymen,
from what ex-
empt.

Penalty for
setting over

SEC. 11. And for encouraging ferry-keepers, and in consideration of setting over public messengers and the persons exempted by this act, *Be it enacted*, that all men while necessarily employed in attending on ferries in this state, shall be free from militia duty, except in times of war and public danger, impressments, opening and repairing roads and highways, so far as personal service is required, and from serving on juries; and if any person or persons, other than ferry-keepers licensed as aforesaid, shall for fee or reward, or any expectation or promise thereof, set any person over

any river or creek where public ferries are established, at any place within two miles of such public ferry, he, she, or they so offending, shall forfeit the sum of three dollars for every such offence, to be recovered before any justice of the peace for the county wherein such offence was committed, in the same manner that other fines are recovered for the breach of the penal laws of this state, and likewise be subject to be taxed by the court doing county business, in the same manner as regularly licensed ferry-keepers.

SEC. 12. If any ferry or ferries which now are, or hereafter may be established, shall not be furnished with the necessary boat or boats, and ferrymen, within the space of six months after the establishment thereof, or if the proprietor shall at any time thereafter, wilfully neglect to attend to the same, it shall and may be lawful for the board of county commissioners of the county wherein such ferry or ferries shall be, on complaint to them made, to cause to be summoned, the proprietor or proprietors of such ferry, to shew cause at the next meeting, why it should not be discontinued, and to decide according to the testimony adduced.

SEC. 13. That hereafter when any person or persons residing or staying in the states of Kentucky or Illinois, shall ferry across the Ohio or Wabash rivers, from the Indiana shore, any where within one half mile of an established ferry, any person, beast, commodity or thing whatever, for which the owner of such ferry might be entitled to ferriage, had the owner of such ferry have ferried over the same, such person or persons so ferrying the same over as aforesaid, shall be liable to pay to the owner of such ferry, the full amount of such ferriage, whether such person or persons received any pay therefor or not; and the owner of such ferry may recover the same, by an action of assumpsit, before any court having jurisdiction thereof: *Provided however*, that the owner of such ferry shall not be entitled to recover the same, if his ferry at the time should not be in sufficient repair, and be sufficiently attended to safely, and in due time ferry over such person, beast, commodity or thing, so as aforesaid ferried over; nor shall this section be construed to extend to cases of sickness or distress, where the same may be necessary.

creek or river
within two
miles of pub-
lic ferry.

Ferry may be
discontinued
by commis-
sioners.

Penalty for
setting over
the Ohio or
Wabash,with-
in half mile of
public ferry.

CHAPTER XLIII.

An Act authorizing the establishment of Fire Companies.

[APPROVED, JANUARY 5, 1821.]

Whereas it has been represented to this general assembly, that an act authorizing the establishment of fire com-

Preamble.

panies, would greatly tend to prevent the destructive effects of fire, and promote an useful and organized co-operation for the suppression thereof: Therefore,

Be it enacted by the General Assembly of the state of Indiana, That from and after the publication of this act, it shall be lawful for any number of persons, resident within any town or corporation within this state, exceeding forty persons, to form themselves into a company or companies, for the purpose of extinguishing fire; who on having their names and subscriptions recorded in the recorder's office of the proper county, are hereby authorized to make such rules and regulations as to a majority of said company or companies may seem proper and necessary for the procuring of engines, buckets, hooks and ladders, and all implements necessary for working said engines and exercising the companies raised; and all fines and forfeitures, for non-attendance or delinquency imposed by the regulations to be adopted by the companies provided for by this act, not exceeding twenty dollars, shall be recoverable by action of debt, before any justice of the peace of the proper county, by the said company in their corporate capacity, which said fines and forfeitures, shall be for the use of the company suing for the same.

Fire companies may be formed under certain restrictions.
May form by laws, &c.

CHAPTER XLIV.

An Act against Forcible Entry and Detainer.

[APPROVED, JANUARY 21, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That two justices of the peace shall have authority to enquire by a jury, as is hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and with a strong hand detain the same, as against those who having lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found upon such enquiry, that an unlawful and forcible entry hath been made, and that the same lands or tenements are held and detained with force and strong hands, or that the same, after a lawful entry, are held unlawfully and with force and strong hands, then such justices shall cause the party complaining to have restitution thereof.

Trial for forcible entry & detainer by jury before two j. p.

SEC. 2. Where complaint shall be formally made in writing to any two justices of the peace, of any unlawful and forcible entry into any lands or tenements and detainer as aforesaid, or of any unlawful and forcible detainer of the

same, after a peaceable entry, they shall make out their warrant under their hands and seals, directed to the sheriff or coroner (as the case may be) of the same county, commanding him to cause to come before them, twelve good and lawful jurymen of the same county, and they shall be empanelled to enquire into the entry or forcible detainer complained of; which shall be in the form following, to wit:

State of Indiana, County, Sct.

To the of county, GREETING:

Whereas complaint has been made to the undersigned, Form thereof. two justices of the peace for the county aforesaid, by E. F., of in the county aforesaid, that G. H. of yeoman, on the day of 18 at aforesaid, with force and arms, and with strong hands, did unlawfully and forcibly enter into and upon a tract of land of him the said E. F. in aforesaid, containing acres, bounded as follows, to wit: (or into the messuage or tene- ment of him the said E. F. as the case may be,) and him the said E. F., with force and strong hands as aforesaid, did ex- pel and unlawfully put out of the possession of the same; (or if it is a forcible detainer only, then the entry shall be described, and the detainer inserted as follows, to wit: And the said G. H. does unlawfully, unjustly and with a strong hand, deforce and still keep out of the possession of the same;) You are therefore commanded in the name and by the authority of the state of Indiana, to cause to come before us, upon the day of 18 at the hour of and at in the county aforesaid, twelve good and lawful jurymen of your county, to be empannelled and sworn to inquire into the forcible entry and detainer (or for the detainer only, as the case may be) before described. Given under our hands and seals, the day of 18

A. B. } Justices of the peace.
C. D. }

SEC. 3. The said justices shall make out a summons to the party complained against, in the form following, to wit:

The state of Indiana,

To the of county, GREETING:

You are hereby commanded to summon G. H., yeoman Form of summons to the defendant. to appear before the undersigned two justices of the peace, for the county of aforesaid, at the hour of on the day of at in the county aforesaid, then and there to answer to and defend against the complaint of E. F., to us exhibited; wherein he com- plains that (here recite the complaint,) and make to us a re- turn of this summons, with your proceedings therein, on or

When a war-
rant shall be
issued.

before the said day. Given under our hands and seals, the day of 18

A. B. }
C. D. } *Justices of the peace.*

Service there-
of.

Which summons shall be served upon the party complained against, or a copy thereof left at his usual place of abode, seven days exclusively before the day appointed by the justices for the trial; and if after the service of such summons, the party does not appear to defend, the justices shall proceed to the enquiry in the same manner as if he were present; and when the jury shall appear, the justices shall lay before them the complaint exhibited, and shall administer the following oath to the foreman and to the other jurors:

Foreman's Oath.

Foreman's
oath.

You as foreman of this jury, do solemnly swear (or affirm) that you will well and truly try whether the complaint of E. F. against G. H. now laid before you, is true, according to the evidence: "So help you God."

The Jurors' Oath.

Jurors' oath.

The same oath (or affirmation) that your foreman has taken on his part, you and each of you shall observe and keep on your respective parts: "So help you God."

And if the jury find the complaint to be true, they shall return their verdict in the form following:

At an inquisition held before A. B. and C. D. Esquires, two justices of the peace for the county of , and state of Indiana, at in the county aforesaid, on the day of 18 , the jury on their oaths, do find that the lands (or tenements) bounded as follows, (as in the complaint,) on the day of 18 , were in the lawful and rightful possession of the said E. F., and that said G. H. did on the same day unlawfully, with force and arms, and strong hands, enter forcibly upon the same: (or being lawfully upon the same, did unlawfully, with force and strong hands, expel and drive out the said E. F., and that he still continues wrongfully to detain the possession from him the said E. F.:) Wherefore the jury, upon their oath (or affirmation) as aforesaid, find that the said E. F. ought to have restitution thereof without delay.

SEC. 4. If by accident or challenge, there shall happen not to be a full jury, the sheriff shall fill the panel with bystanders as in other cases; and if the jury after a full hearing of the cause, shall find the complaint laid before them, supported by evidence, they shall all sign their verdict in the form aforesaid; otherwise the defendant shall be allowed his legal costs, and have his execution thereof.

SEC. 5. If the jury shall return their verdict signed by the whole panel, that the verdict is supported by evidence,

Form of ver-
dict.

Jury to sign
the verdict.

the justices shall enter up judgment for the complainant to When j. p. have restitution of the premises, and shall award their writ shall enter up judgment, & award a writ of restitution of restitution accordingly; which writ of restitution shall be in the following form:

The State of Indiana,

To the of county, GREETING: Form of writ.

Whereas, at an inquisition of forcible entry and detainer, held before us the undersigned two justices of the peace, for the county of , in the said state of Indiana, at in the county aforesaid, on the day of 18 , the jurors empanelled and sworn according to law, returned their verdict in writing, signed by each of them, that E. F. was on the day of 18 , in the rightfull possession of a certain messuage or tract of land, (as in the verdict returned,) and that &c: (as in the verdict:) Whereupon it was considered by us, justices as aforesaid, that E. F. should have restitution of the same. You are therefore commanded, that taking with you the force of the county if necessary, you cause the said G. H. to be forthwith removed from the premises, and the said E. F. to have the peaceable restitution of the same; and also, that you levy of the goods, chattels, or lands of the said G. H., the sum of , being costs taxed against him on the trial aforesaid, together with more for this writ and your own fees; and for want of such goods, chattels, or lands of the said G. H. by you found, you are commanded to take the body of the said G. H., and him commit to the common jail of the said county, there to remain until he shall pay the sum aforesaid, together with all fees arising on the service of this writ, or until he be delivered by due course of law; and make return of this writ with your proceedings. Witness our hands and seals at aforesaid, the day of , 18 .

A. B. }
C. D. } *Justices of the peace.*

SEC. 6. Every person or persons who shall be aggrieved by any proceedings which may be had under the provisions of this act, shall be entitled to an appeal to the circuit court of the same county, under the same restrictions and in the same manner that appeals are taken from the judgment of justices, under the statute respecting the trial of small causes; and the said circuit court shall hear and determine the same agreeably to the true intent and meaning of this statute, and carry the same into final execution; but such judgment shall be no bar to any after action brought by either party.

SEC. 7. This law shall not extend to any person who has had the occupancy, or been in the quiet possession of any lands or tenements for the space of three whole years toge- Three years possession, a bar to a writ

Appeal to cir-
cuit court.

of forcible en- ther, next before, and whose estate therein is not determin-
thy & detainer ed or ended.

SEC. 3. This act to be in force from and after its publication.

CHAPTER XLV.

An Act for the prevention of Frauds and Perjuries.

[APPROVED, JANUARY 26, 1818.]

Estates crea-
ted by parol
and without
writing, es-
tates at will.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That all leases, estates, interest of freehold, or terms of years, or any uncertain interest of freehold or term of years, or any uncertain interest of, in, or out of any messuages, lands, tenements, or hereditaments, made or created by livery and seizin only, or by parol and not put in writing, and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect; any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding.

Exception to
leases not ex-
ceeding three
years.

SEC. 2. Except nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term shall amount unto two third parts at the least of the full improved value of the thing demised.

Assignment of
leases, &c. to
be in writing.

SEC. 3. And moreover, that no leases, estates or interests, either of freehold or of term of years, or any uncertain interest of, in, to or out of any messuage, lands, tenements or hereditaments, shall at any time be assigned or granted, unless it be by deed or note in writing, signed by the party so assigning or granting the same, or their agents thereunto lawfully authorized by writing, or by act or operation of law.

What agree-
ments must be
in writing.

SEC. 4. No action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer damages out of his own estate; or whereby to charge the defendant, upon any special promise, to answer for the debt, default or miscarriage of another person; or to charge any person, upon any agreement, upon consideration of marriage; or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some note

or memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

SEC. 5. All devises and bequests of any lands or tene- Devises to be
ments, devisable by force of this act, or any other statute in writing, at-
of this state, shall be in writing, and signed by the party so
devising the same, or by some other person in his presence
and by his express directions, and shall be attested and sub-
scribed in the presence of the said devisor, by two or more
competent witnesses, or else they shall be utterly void and
of none effect.

SEC. 6. *And moreover,* no devise in writing, of lands, te- Revocation to
nements, or hereditaments, or any clause thereof, shall at be in writing,
any time be revocable, otherwise than by some other will
or codicil in writing, declaring the same, or by burning,
cancelling, tearing or obliterating the same by the testator
himself, or in his presence and by his directions and con-
sent; but all devises and bequests of lands and tenements,
shall remain and continue in force until the same be burnt,
cancelled, torn or obliterated, by the testator or his direc-
tions, in manner aforesaid, or unless the same be altered by
some other will or codicil in writing, or other writing of the
devisor, signed in the presence of two or more competent
witnesses declaring the same; any former law or usage to
the contrary notwithstanding.

SEC. 7. All declarations or creations of trust or confi- Creation of
dence of any lands, tenements or hereditaments, shall be trusts to be in
manifested and proved by some writing signed by the party,
who is by law enabled to declare such trust, or by his last
will in writing, or else shall be utterly void and of none ef-
fect.

SEC. 8. *Provided always,* that where any conveyance shall be made of any lands or tenements, by which a trust or confidence shall or may arise or result, by the implication or construction of law, or to be transferred or extinguished by an act or operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made; any thing herein before contained to the contrary notwithstanding.

SEC. 9. All grants and assignments of any trust or confi- Assignment of
dence, shall likewise be in writing, signed by the party trusts to be in
granting or assigning the same, by such last will or devise,
or else shall likewise be utterly void and of none effect.

SEC. 10. It shall and may be lawful for every sheriff or How the cre-
other officer, to whom any writ or precept is or shall be di- ditor of *cestui que trust* shall
rected, at the suit of any person or persons, of, for and up- proceed to obtain
on any judgment, statute or recognizance, hereafter to be made or had, to do, make and deliver execution unto the estate in trust.
party in that behalf suing, of all such lands, tenements and

hereditaments, as any other person or persons be, in any manner or wise, seized or possessed, or shall hereafter be seized or possessed, in trust for him, against whom execution is so sued, like as the sheriff or other officer might or ought to have done, if the said party, against whom execution hereafter shall be so sued, had been seized of such lands, tenements or hereditaments, of such estate as they be seized of in trust for him at the time of the said execution sued; which lands, tenements or hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed, freed and discharged from all incumbrances of such person or persons, as shall be so seized or possessed, in trust for the person, against whom such execution shall be sued; and if any cestui-que-trust hereafter shall die, leaving in trust in fee simple, to descend to his heir or heirs, then, and in every such case, such trust shall be deemed and taken, and is hereby declared to be assets by descent, and the heir or heirs shall be liable to and chargeable with the obligation of his ancestors, for and by reason of such assets, as fully and amply as he might or ought to have been, if the estate in law had descended to him in possession, in like manner as the trust descended; any law, usage or custom to the contrary notwithstanding.

Estates in trust assets.
May be seized on execution as such, after the heir has parted with the same.

Estates per auter vie devisable as estates in fee simple, and assets in the hands of the heir or executor.

Judgment from the signing thereof a lien upon real estate.

SEC. 11. *Provided always,* that no heir or heirs, that shall become chargeable, by reason of any estate or trust, made assets in his hands by this law, shall, by reason of any kind of plea or confession of the action, or suffering judgment nient dedire, or any other matter, be chargeable to pay the condemnation out of his own estate, but execution shall be sued of the whole estate, so made assets in his hands by descent, in whose hands soever it shall come after the writ purchased, in the same manner as it is to be at and by the common law, where the heir at law pleading a true plea, judgment is prayed against him thereupon; any thing in the present act to the contrary notwithstanding.

SEC. 12. That from henceforth any estate per auter vie shall be devisable by will in writing, signed by the party so devising the same, or by some other person in his presence, and by his express directions, attested and subscribed in the presence of the devisor, by two or more witnesses; and if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a special occupancy, as assets by descent, as in case of lands in fee simple; and in case there be no special occupant thereof, it shall go to the executors or administrators of the party, that had the estate thereof by virtue of the grant, and shall be assets in their hands.

SEC. 13. Any court of record, judge, or officer of any court of record within this state, that shall sign any judgments, shall, at the signing of the same, without fee or reward for doing the same, set down the day of the month and

year of his so doing upon the record, which he shall sign, and such judgments as against purchasers *bona fide* for valuable consideration, of lands, tenements or hereditaments, to be charged thereby, shall, in consideration of law, be judgments from such times as they shall be so signed.

SEC. 14. No writ of *fieri facias*, or other writ of execution, shall bind the property of the goods against whom such writ of execution is sued forth, but from the time that such writ shall be delivered to the sheriff, under-sheriff, or coroner to be executed; and it shall be the duty of such sheriff, under-sheriff, or coroner, upon the receipt of any such writ, without fee for doing the same, to endorse upon the back thereof, the day of the month and year, he or they received the same.

SEC. 15. No contract for the sale of any goods, wares and merchandizes, for the price of thirty dollars or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

SEC. 16. No will in writing, concerning any goods or chattels, or personal estate shall be repealed, nor any clause, devise or bequest therein be altered or changed by any words, or will by word of mouth only, except the same be in the life of the testator, committed to writing, and after the writing thereof, read unto the testator and allowed by him, and proved to be so done by two witnesses at the least.

All acts and parts of acts coming within the purview of this act, shall be and the same are hereby repealed.

This act to be in force from and after its publication.

Goods bound from delivery of execution.

Sale of goods voidable, without delivering earnest or note in writing.

Wills of chattels, how revoked.

CHAPTER XLVI.

An Act authorizing the arresting and securing Fugitives from Justice.

[APPROVED, JANUARY 22, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That if any person shall commit any crime in any of the United States or the territories thereof, and shall flee into this state, it shall be lawful for any judge of the supreme or circuit court, or justice of the peace within this state, on the oath or affirmation of any person charging such fugitive with a crime, to issue his warrant, and cause such fugitive to be arrested and brought before him; and after

Fugitive from justice fleeing into this state, how proceeded against.

Warrant of removal.

Fugitive fleeing from one county to another in this state, how arrested.

Oath being made in distant county, justice to endorse his name on the warrant.

When no sufficient prison, criminal to be sent to the jail of another county.

hearing the proofs and allegations for and against such fugitive, if in the opinion of such judge or justice, the proof is evident or presumption strong, as to the guilt of the person charged, it shall be the duty of the judge or justice, to commit such fugitive from justice to the common jail of the county where such arrest may be made, for any length of time not exceeding one month; or in case any sheriff, coroner or constable, shall have pursued such fugitive, it shall be the duty of such judge or justice, to give such sheriff, coroner or constable, a warrant to remove such fugitive; which shall be a sufficient authority to remove such fugitive from this state, to the state or territory from which he fled.

SEC. 2. That when any warrant, capias or other process of a criminal nature shall issue from any judge, justice or other authority competent to issue the same, and shall be put into the hands of any constable or other person properly authorized to execute the same, against any person charged with the commission of any offence against the laws of this state, or when any person shall have escaped from legal custody, it shall and may be lawful for the officer holding such warrant, or from whose custody such person shall have escaped, to pursue such person to any county within this state, and arrest and secure him or her; and such officer shall have authority, by virtue of the powers herein given, to take the person thus arrested, to the county in which the offence was committed, or from which the escape was made: *Provided however*, that it shall be the duty of the said officer, previous to making any such arrest in any other than his own county, to go before some justice of the peace in the county, in which the fugitive is supposed to be, and make oath that the process was regularly issued in the county from which such fugitive fled, or in case of escape, that he is in pursuit of a person, naming him, who has escaped from legal custody; and when such oath shall be made, it shall be the duty of such justice when a warrant is produced, to endorse his name as such justice, on the back of the said warrant, or in case of escape and pursuit, issue a warrant directed to such officer, authorizing and commanding him to seize such fugitive, and retake him to the county from which he may have escaped; which endorsement or new warrant, shall give to such officer as full and ample authority in all respects, to make such arrest or recaption, as he would have in the county in which he was elected or appointed.

SEC. 3. That when there is no sufficient prison in any county, wherein any criminal offence shall have been committed, it shall be lawful for any judge of the circuit court of such county, upon application of the sheriff thereof, to order any person charged with a criminal offence, and committed or ordered to be committed to prison, to be sent to the jail of the county nearest, having a sufficient jail; and

the sheriff of such county, shall on exhibit of such judge's order, receive and keep in custody, in the jail of his county, the prisoner ordered to be committed as aforesaid, at the expense of the county from which such prisoner was sent; and the said sheriff shall upon the order of the circuit court, or a judge of said county, redeliver such prisoner when demanded.

CHAPTER XLVII.

An Act relative to Fugitives from Labour.

[APPROVED, JANUARY 22, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That any person or persons of any state or territory, having any claim to the service of any person or persons within this state, may in person or by attorney, go before the clerk of any circuit court within this state, and make affidavit, that he, she or they, or the persons for whom he or they are agents or attorneys, have or has a just claim to the service of such fugitive person or persons, agreeably to the laws of the state from which such fugitive or fugitives from labour, hath or have fled, as also the name or names of the owner or owners; (when affidavit is made by attorney;) which affidavit shall be taken by such clerk and filed in his office; whereupon it shall be the duty of such clerk to issue his warrant, directed to the owner or owners of such fugitive from labour, or to his, her, or their agent or attorney, commanding him or them forthwith to carry such fugitive before some justice of the peace or judge of the circuit court, or supreme court within this state; and it shall be the duty of the clerk to affix the county seal thereto, and the warrant so sealed as aforesaid, shall be sufficient authority for the person in whose possession the same may be, to authorize him to arrest such fugitive from labour, wherever he may be found in this state, and him to convey before some justice of the peace, judge of the circuit or supreme courts, that may reside in the county or district where such fugitive shall be found.

SEC. 2. It shall be the duty of such justice of the peace or judge, (as the case may be,) to cause such fugitive from labour to be taken into custody, and the same to commit or let to bail until the parties shall be ready for trial, which time shall not exceed sixty days, and shall be at the discretion of the justice or judge, upon the circumstances of the case made known by affidavit; and it shall be the duty of such justice of the peace or judge, as the case may be, to

How persons of another state, claiming service of one in this, shall proceed.

Duty of clerk of c. court.

Judge or justice may commit, or let to bail.

Determine in a summary way.

Give certificate.

Appeal may be granted.

Fugitive may be committed.

Proviso.

Sheriff to notify associate judges, &c.

Shall summon a jury.

Proceedings of special court, may be certified to c. court.

hear and determine the case in a summary way; and if such justice or judge shall be of opinion, that such fugitive did owe service according to the claim sworn to, he shall give such owner or agent a certificate of that fact, which shall be sufficient authority for such agent or owner, to remove such fugitive from the state: *Provided however,* that either party may appeal by paying the costs of such trial, and giving security for the costs that may accrue on such appeal; and in all cases where an appeal may be taken, it shall be the duty of the justice or judge to require of such fugitive from labour, to give security for his appearance, and abiding the event of such trial, and on failure thereof, to commit such fugitive to the jail of the county, there to be kept at the expense of the appellant until the time of such trial: *Provided also,* that no such appeal shall be granted to such fugitive from labour, until he or she shall make out and file affidavit, that he or she does not owe service.

SEC. 3. In all cases where an appeal may be granted under the provisions of this act, it shall be the duty of the justice of the peace, or the judge, as the case may be, granting such appeal, to issue his warrant to the sheriff of the county, directing him, forthwith to notify the associate judges thereof, or any circuit judge having jurisdiction in such county; whose duty it shall be, when so notified, to attend at the court house of the county, in which such arrest shall have been made, on the day named in the warrant of the judge or justice as aforesaid, which day shall not be more than five days after the arrest; and it shall be the duty of such sheriff, to summon a good and lawful jury of the county, who shall attend at the time and place appointed for trial, and for failure so to do, shall be subject to like penalties as jurymen are in other cases.

SEC. 4. That on the appearance of the parties before such special court, if either of the parties shall make it appear to the satisfaction of such court, that they cannot safely go into trial at that time, such court may continue such cause, until the ensuing term of the circuit court for said county, and shall send up a transcript of their proceedings to said court, together with the proceedings had before the judge or justice, before whom the first proceedings were had; on which the clerk of said circuit court shall docket such suit, where the same shall stand for trial, subject to the same rules of law and proceedings generally, as other civil actions are; any thing herein, to the contrary notwithstanding.

CHAPTER XLVIII.

An Act to prevent unlawful Gaming.

[APPROVED, JANUARY 2, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That all promises, agreements, notes, bills, bonds, Gaming contracts, mortgages, or other securities whatsoever, made or tracts void, entered into, after the taking effect of this act, when the whole or any part of the consideration of such promise, agreement, conveyance or security, shall be for money or other valuable thing whatsoever, won, laid or betted at cards, dice-tables, tennis-balls, or other game or games whatsoever, or at any horse-race, or cock-fighting, or any other sports or pastime, or on any wager whatever, or for the reimbursing or repaying, any money lent or advanced, at the time of such play, bet or wager, for the purpose of being betted or wagered, shall be utterly void and of no effect, to all intents and purposes whatsoever.

SEC. 2. If any person or persons at any time, by playing at any game or games, or betting on the hands or sides of such as do play at any game or games, shall lose to any one or more persons so playing or betting, any sum of money, How, & when or any valuable thing, and shall pay or deliver the same, or any part thereof; the person or persons, so losing and paying or delivering the same, shall be at liberty within six months next following, to sue for and recover the money or other valuable thing, so lost and paid or delivered, or any part thereof, with costs of suit, by action of debt founded on this act, to be prosecuted in any court, or before any justice of the peace, having jurisdiction thereof; in which action, it shall be sufficient for the plaintiff to allege, that the defendant is indebted to the plaintiff, or has received for the plaintiff's use, the money so lost and paid, or converted the goods won of the plaintiff, to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this act, without setting forth the special matter; and in case of the party so losing such money, or other thing aforesaid, shall not within the time aforesaid, bona fide, without covin or collusion, sue and with effect prosecute for the money or other thing, so lost and paid or delivered, it shall and may be lawful, to and for any other person or persons, by any such action or suit as aforesaid, to sue for and recover the same with costs of suit, against any such winner or winners, for the benefit of the family, or next of kin to the person or persons losing the same; and in case there shall be no such family or kindred, for the benefit of county seminaries.

SEC. 3. Every person by virtue of this act, who shall or may be liable to be sued for money or other things so won as aforesaid, shall be compelled to answer upon oath, such Winner to answer on oath.

On repayment, exempt from further penalties.

bill or bills in chancery, preferred against him or them, for discovering the money or thing so won at play as aforesaid: *Provided however*, upon discovery and repayment of the money or things, so to be discovered and repaid as aforesaid, the person or persons discovering and repaying the same with costs, shall be acquitted, indemnified and discharged from any further or other forfeiture, punishment or penalty, which he or they may have incurred, by playing for, or winning such money or other things so discovered and repaid.

CHAPTER XLIX.

An Act to improve the breed of Horses.

[APPROVED, DECEMBER 31, 1817.]

Horses running at large, &c.

Mode of procedure on taking up a horse of the height of 14 1-2 hands if known as a covering horse.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That it shall and may be lawful for any person or persons to take up and geld, at the risk of the owner any stoned horse, of the age of eighteen months and upwards, that may be found running at large, out of the enclosed ground of the owner or keeper, and if the said horse should happen to die, he shall have no recourse against the person or persons who shall have so taken up and gelded the said horse; and the owner of the said horse shall moreover pay to the said person who has so taken up and gelded the said horse, or caused it to be done, the sum of one dollar, to be recovered before any justice of the peace of the county.

SEC. 2. It shall not be lawful for any person or persons to geld any horse above fourteen and one half hands high, that is known to be kept for covering mares, but if any owner or keeper of a covering horse shall wilfully and negligently suffer said horse to run at large out of the enclosed lands of the owner or keeper, any person may take up said horse and carry him to his owner or keeper, for which he shall receive two dollars, recoverable before any justice of the peace of the county; for a second offence double the sum, and for a third offence said horse may be taken and gelded, as is provided in the first section hereof.

CHAPTER L.

An Act providing for the support of Illegitimate Children.

[APPROVED, JANUARY 22, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That on complaint made to any justice of the peace in this state, by any unmarried woman resident therein, who shall hereafter be delivered of a bastard child, or being pregnant with a child, which if born, also may be a bastard, accusing any person of being the father of said child, the justice shall take such accusation in writing, and thereupon issue his warrant directed to the sheriff or one of the constables of his county, commanding him forthwith to bring such accused person before such justice, to answer to such complaint; and on return of such warrant, the justice in the presence of such accused person, (if such accused person can be taken by the proper officer, if not, then in his absence,) shall proceed to examine the complainant on oath, respecting her cause of complaint, and such accused person shall be allowed to ask by himself or his counsel, such complainant under her oath or affirmation, (as the case may be,) any reasonable question necessary to his justification, and such answers and questions, with every other part of the examination shall be reduced to writing by the justice, and if on such examination, such accused person shall satisfactorily appear to be the father of the child so begotten, he shall pay or cause to be paid to the woman complaining, such sum or sums of money or other property as she may agree to receive in full satisfaction; and shall further enter into bond with the overseers of the poor of the township in which such woman shall reside, and their successors in office, conditioned to save such county free from all charges toward the maintenance of said child; and in case such person shall so comply with the requisitions of this act, then the justice shall discharge such person, on his paying the costs of prosecution.

SEC. 2. When any woman has a bastard, and neglects to bring suit for the maintenance of such child, or commences a suit and fails to prosecute to final judgment, the overseers of the poor in any township interested in the support of any such bastard child, when sufficient security is not offered to save the county from expense, shall bring forward a suit in behalf of the county, against him who is accused of begetting such child, or may take up and prosecute a suit begun by the mother of the child.

SEC. 3. In case such accused person do not comply with the provisions of the first section contained in this act, the justice to whom such complaint was made, shall bind such person in a recognizance to the next circuit court, with suf-

J. p. to issue warrant on complaint.

J. p. and the accused may interrogate the complainant.

Examination to be in writing.

Indemnifying bond to the overseers of the poor.

Overseers of the poor may prosecute the reputed father.

When the accused shall be recognized or committed to jail.

Illegitimate Children.

ficient security, in a sum not less than one hundred dollars, nor more than five hundred dollars, to answer such accusation, and to abide the order of said court thereon; and on neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer to such complaint.

If the complainant be unable to attend the circuit court, a continuance may be had.

Plea of not guilty, to be tried by a jury.

Complainant a competent witness.

On a verdict of guilty, the accused to give security, &c.

SEC. 4. If it shall happen at the time of holding such court, that the woman be unable to attend, the court shall order the renewal of the bonds of recognizance, that the accused person shall be forthcoming at the next court, at which the mother of said child shall be able to attend; and the continuance of said bonds shall be entered by order of said court, unless the security shall object thereto, and shall have the same force and effect as a recognizance taken in court for that purpose.

SEC. 5. Whenever such accused person shall plead not guilty to such charge, before the court to which he is recognized, the court shall order the issue to be tried by a jury, and at the trial of such issue, the examination before such justice shall be given in evidence; and the mother of such bastard shall be admitted as a competent witness, and her credibility left with the jury: *Provided always*, that no woman shall be admitted as a witness as aforesaid, who has been convicted of any crime which would disqualify her from being a witness in any other case. On the trial of the issue, the jury shall, in behalf of the man accused, take into consideration any want of credibility in the mother of the bastard child, also, any variation in her testimony before the justice, and that before the jury, and also any other confession of her at any time, which does not agree with her testimony, or any other plea or proofs made on behalf of such accused person.

SEC. 6. In case the jury find the defendant guilty, or such accused person before the trial, shall confess in court that the accusation is true, he shall be judged the reputed father of such child, and shall stand charged with the maintenance thereof, in such sum or sums as the court shall order and direct, with payment of costs of prosecution; and moreover be liable to the suit of the complainant for damages; and the court shall require the reputed father to give security to perform the aforesaid order, and in case the reputed father shall refuse or neglect to give security as aforesaid, and pay the costs of prosecution, he shall be committed to the jail of the proper county, there to remain until he shall comply with the order of the court, or until such court shall, on sufficient cause shewn, direct him to be discharged.

This act shall commence and be in force from and after the publication hereof.

Interchange of Statutes....Interest of Money.

CHAPTER LI.

A Joint Resolution providing for an interchange of Statute Laws with the several states in the Union.

[APPROVED, JANUARY 2, 1821.]

Whereas it is desirable to have an interchange of statute laws with the several states in the Union, therefore:

Be it resolved by the General Assembly of the state of Indiana, That a copy of the statute laws of this state, be transmitted by the secretary of state to each of the governors of the several states, accompanied with a request soliciting an interchange of laws with them, or such of them from whom copies of their statute laws have not already been received; and that the secretary of state be instructed to keep a book, in which he shall enter the date of the times he may receive and transmit laws, and that he make report of his proceeding therein against the third day of each session of the general assembly.

CHAPTER LII.

An Act regulating the Interest of Money in the state of Indiana.

[APPROVED, JANUARY 21, 1813.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That creditors, (excepting as hereinafter excepted,) shall be allowed to receive interest at the rate of six per centum per annum, for all monies after they become due, on bond, bill, promissory note, or other instrument of writing, or any judgment recovered in any court of record now or hereafter to be established within this state, from the day of signing judgment, until effects be sold, or satisfaction of judgment be made; likewise on money lent on money for the forbearance of payment whereof an express promise has been made, for the payment of interest, on money due on the settlement of accounts, from the day of liquidating accounts between the parties and ascertaining the balance, on money received to the use of another and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay of payment.

SEC. 2. No person or persons shall, on any contract which shall be made, directly or indirectly, take for the loan or use of money or other commodity, above the value of six dollars, for the forbearance of one hundred dollars or the value thereof for one year, and so proportionably for any greater or less sums; any law, usage or custom to the contrary notwithstanding.

Proceedings
when suit is
commenced
on usurious
contract.

SEC. 3. If any person shall, directly or indirectly, receive any money, obligation, promise or other commodity, by way of premium, or any other name by which the same may be called or understood, to the end of obtaining any higher rate of interest than six per centum per annum, for the loan or use of money or any other commodity, on any contract which hath been made, after the fifteenth of November, one thousand seven hundred and ninety-nine, or shall hereafter be made, and shall institute an action in law for the recovery of the money due on, or by reason of the breach of such contract so as aforesaid made, it shall be lawful for the defendant in such action in pleading, to set forth the special matter in bar of so much of the real sum of money or price of the commodity actually lent, advanced or sold, as shall be the amount of the aforesaid premium or sum actually received; and if the plea of the defendant is confessed or adjudged good on demurrer, or supported by the verdict of a jury, then, and in every such case, the plaintiff shall recover no more than what remains of the aforesaid sum of money or price of the commodity actually lent, advanced or sold, after deducting the said premium, without even any interest on the principal, and if a residue is still left, the plaintiff may enter judgment for the same and have execution therefor, with interest and costs accruing from the signing of the judgment: *Provided always*, that if the premium or usurious interest and costs exceed the principal or real sum of money, or the price of the commodity actually lent, advanced or sold, the excess shall be deemed a debt of record, and on motion of the defendant made in open court, such defendant may enter judgment for the same, with costs, at the next or any subsequent term within one year, and have execution accordingly.

CHAPTER LIII.

An Act concerning Insane Persons.

[APPROVED, JANUARY 22, 1818.]

Acts of insane
persons void

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That any bargain, sale, conveyance or act of any person or persons, in a state of insanity, shall be void and of no effect in law.

SEC. 2. When any circuit court in this state, shall receive satisfactory information that any person in their respective counties, having property, and is or have become insane, it shall be the duty of the said court, to direct the sheriff of

the county to summon twelve intelligent, disinterested men of the county, impartially to enquire into the fact, and to appoint the time and place where such jury shall meet and inspect such insane person, and also to cause to come before them, such persons as they may think proper, to give testimony as to the insanity of such person, and if the jury so summoned and sworn, shall decide from such inspection and testimony, that such person is insane, and not able to take care of his or her property, the court shall proceed to appoint three suitable persons as guardians of the person and estate of such insane person; whose duty it shall be to take such care of the person and property of such insane person, as may be necessary for the safety and preservation of the same.

SEC. 3. Whenever it may be thought necessary, the circuit court of the county wherein such inquest of insanity was held, upon proper representation, may direct and order the sale of the real and personal estate of such insane person, for the support of such insane person, his or her family, the payment of his or her debts, or for the improvement thereof; and generally to act and do what to them shall seem proper, for the benefit of the person or property of such insane person, consistent with law.

SEC. 4. As soon as it is determined by inquest as mentioned by the second section of this act, that such person is insane, it is hereby declared that all judgments, executions and suits pending against such insane person, shall be suspended until the appointment of a guardian or guardians; and then the same proceedings may be had against such guardian or guardians, whose appointment shall continue during the insanity of such insane person, to be recovered by the court for the recovery of the debts of such insane person, under the same rules, restrictions and regulations as are prescribed by the existing laws of this state against administrators and executors.

SEC. 5. All persons insane, who have no property for their support, shall be entitled to all the benefits of the laws of this state, for the relief of paupers; and the overseers of the poor, and all other persons concerned, are directed to govern themselves according to the provisions of an act for the relief of the poor.

SEC. 6. All acts and parts of acts concerning insane persons, heretofore in force in this state, are hereby repealed.

This act to take effect and be in force from and after its publication.

Circuit court
may appoint
guardians af-
ter a verdict
of insanity.

Circuit court
may order a
sale of proper-
ty.

Judgments,
executions,
&c. after ver-
dict of insani-
ty, suspended.

When insane
persons shall
be considered
paupers.

CHAPTER LIV.

An Act for the relief of Insolvent Debtors.

[APPROVED, JANUARY 28, 1824.]

Sec. 1. Be it enacted by the General Assembly of the state of Indiana, That any person who is insolvent and unable to pay his just debts, may by petition in writing to the circuit court in and for the county in which said person resides, obtain relief in manner as hereafter prescribed.

Schedule.

Notice of pendency of the petition.

Oath of applicant.

Petition and schedule may be filed in the clerk's office.

Supersedeas.

Court appoint trustees.

That any person who is insolvent and unable to pay his just debts, may by petition in writing to the circuit court in and for the county in which said person resides, obtain relief in manner as hereafter prescribed.

Sec. 2. That before any insolvent person shall be entitled to the benefit of this act, such person on his application as aforesaid, in a schedule for that purpose made, shall exhibit to the court, an accurate statement of all debts by him owing, and of all debts and demands to him due or accruing, and of all property of every kind and description by him owned, possessed or claimed, except such as is or may be exempt from execution.

Sec. 3. That the court to whom application as aforesaid shall be made, shall cause such notice of the pendency of such petition to be given in one or more of the public papers printed in this state, giving at least sixty days notice of the time and place of the courts acting upon such petition, which notice shall be published at least three weeks successively. The court on the final hearing of such petition, shall cause the applicant on oath or affirmation, to attest to the truth of his petition preferred, and to the schedule exhibited, and that he will without fraud or deceit, deliver up and convey to such persons as the court may appoint, in trust, and for the use of his creditors, all his estate both real and personal, and that he never has, directly or indirectly, in any way or manner, disposed of any of his property, with a view thereby to injure or defraud any of his creditors; and the court may cause such applicant, on oath or affirmation, to answer such questions as may be put to him, relating to his property. And when hereafter any insolvent debt-

or, shall file his petition and schedule, attested by oath or affirmation, in the clerk's office of the proper county, with bond and security to the party at whose suit he is imprisoned, to be approved by the clerk of said court, conditioned as is required in this act, it shall be the duty of said clerk, if civil process of any kind shall have issued against such petitioner, to issue a supersedeas to such process, which all sheriffs and other officers are hereby required to obey.

Sec. 4. That on the final hearing and determination of the court, on the petition of any insolvent debtor, it is hereby made the duty of the court, to appoint one or more trustees, for the purpose of accepting and receiving a conveyance or assignment from each insolvent petitioner, of all the lands, tenements, hereditaments, goods, chattels, rights, cre-

dits, and effects, (excepting such effects as may be exempted from execution by law,) as the said petitioner may possess; and before the trustees appointed as aforesaid, proceed to act under the authority of their appointment, they shall give bond to the county treasurer, with sufficient sureties to the acceptance of the court, in double the amount of the property to them transferred by such insolvent petitioner, conditioned for the faithful performance of their trust.

Sec. 5. That the said trustee or trustees, are hereby empowered to determine and adjust all controversies which arise in the settlement of such insolvent petitioners affairs, either by suit at law, or by arbitration; and such insolvent petitioners in all cases, shall be entitled to a set off of all demands, against any and every creditor, having claim against him; and the trustees may institute any suit or suits, for the recovery of any and all debts, dues and demands, which may have been transferred or conveyed to them as aforesaid, in trust for the use of the creditors; and no suit instituted by such insolvent petitioner, and which is pending at the time of his assignment shall abate thereby, but shall be continued in his name; but if recovery shall be had, the avails thereof shall be assets in the hands of the trustees, for the payment of the debts of the insolvent petitioner.

Sec. 6. That the trustees aforesaid, after having collected all the debts, dues and demands to them assigned in trust as aforesaid, and after having converted all other property to them assigned in trust as aforesaid, into money, shall proceed without delay to make an equal dividend of the same, agreeably to the provisions hereinafter specified, among the creditors, who shall have exhibited their claims, in proportion to the amount of their just demands respectively; provided that the trustees may retain for their services and expenses, such compensation as the court shall adjudge reasonable.

Sec. 7. That the trustees immediately after executing their bonds as aforesaid, shall give notice by advertisements posted in three of the most public places in the county, of the time and place they will meet, for the purpose of receiving and determining all claims against the petitioner; at which time and place the dividend aforesaid shall be made: Provided always, that six months notice at least shall be given of the time, place and purpose of said meeting, by the trustees; and if any creditor shall fail to exhibit his claim at or within the time specified in said notice, he shall be entitled to no share in the distribution, and the trustees shall make distribution of so much of such property, as they may have been able to convert into money, every six months, and so on from time to time, until the whole of such estate is distributed, except what is heretofore excepted; and when

Trustees give bond.

Their powers and duties.

Dividend.

Trustees, advertise time and place of meeting.

Six months notice of.

Distribution every six months.

Insolvent Debtors.

Appeal.

Fraud of petitioner, its consequences.

After discharge, debtor privileged from imprisonment.

Insolvent in prison at the time of filing his petition, how released.

Sheriff prosecuted for escape, &c. may plead the general issue and give this act in evidence.

Person unable to support himself in prison, shall be supported by the plaintiff or liberator.

Fraud established on petitioner, he shall not be discharged.

any creditor conceives himself aggrieved by any decision or act of the trustees, he may at any time within five days after such decision of the said trustees, take an appeal therefrom, to the next circuit court for the county, which is hereby empowered to make up a final decision upon the subject matter contained in such appeal.

SEC. 8. That if the insolvent petitioner shall have directly or indirectly, sold, lessened, concealed, kept back, or otherwise disposed of any of his lands, tenements, rights, credits, monies, or effects whatsoever, thereby to defraud any of his creditors, such petitioner, on proof of the same to the court, made at any time within three years, shall derive no benefit from his discharge under this act, but the same shall be void, and he shall on conviction thereof, be deemed guilty of perjury, and punished accordingly.

SEC. 9. That after any person shall have assigned all his property as aforesaid in trust for the use and benefit of his creditors, and shall have been legally discharged agreeably to this act, his person shall forever after be privileged from imprisonment, for any debt due and owing by him at the time of filing his petition as aforesaid; but any property he may afterwards acquire, shall always be liable for the payment of such debts.

SEC. 10. That should any insolvent petitioner be imprisoned, either on mesne process, or capias ad satisfaciendum, at the time of filing his petition as aforesaid, it shall be the duty of the clerk of the circuit court to which application is made, to issue an order to the sheriff of the county to discharge the applicant from his imprisonment, on his giving satisfactory bonds to the party at whose suit he is imprisoned, to the acceptance of the clerk of the circuit court, if in vacation, or to the acceptance of the court, if in term time, conditioned for the faithful assignment of all his property, for the benefit of his creditors.

SEC. 11. That if any sheriff or other officer, shall be prosecuted for the escape of any person liberated under this act, such sheriff or other officer, may under the plea of general issue, give this act, and the special matter in evidence.

SEC. 12. That when any person who is imprisoned for debt, either on mesne process or capias ad satisfaciendum, shall be unable to support himself in prison, and having made oath to that effect, before any justice of the peace for the county, the plaintiff in either case shall stand chargeable for his support, and in case the plaintiff shall refuse, or be unable to support the debtor in prison, such debtor shall be immediately set at liberty.

SEC. 13. It shall be lawful for any person or persons on the final hearing of said petition by disinterested testimony, to establish fraud on such petitioner, and if such fraud be satisfactorily shewn, the court shall not discharge the peti-

Insolvent Debtors.

tioner; but if process shall have been issued and superseded, new process shall issue.

SEC. 14. If any person shall be taken or charged in execution, on any judgment obtained before any justice of the peace, it shall be lawful for any two justices of the peace of Justices of the county, upon petition of the prisoner or prisoners, by peace may warrant under their hands and seals, to require the sheriff, from im-

jailor or keeper of the prison in such county, to bring the onment, in body of such prisoner or prisoners before them, at the court certain cases.

house, on a certain day, together with a list of the several executions, with which he or they may stand charged in the said jail; which warrant, every such sheriff, jailor or keeper, is hereby commanded to obey; and notice shall be

given to the party or parties, his, her or their executors, administrators or agent, at whose suit such prisoner shall be in execution, if living within the county; and such prisoner

coming before the justices, shall subscribe and deliver in a schedule of his or her whole estate, and take the following

Schedule.
Oath.

oath: *I A. B., do in the presence of Almighty God, solemnly swear or affirm (as the case may be) that the schedule now delivered and by me subscribed, doth contain to the best of my knowledge and remembrance, a full, just, true and perfect account and discovery, of all the estate, goods,*

money and effects unto me in any wise belonging, and such debts as are unto me owing, or to any person in trust for me, and of all securities and contracts, whereby any money

may hereafter become payable, or any benefit or advantage accrue to me or my use, or any person or persons in trust for me; and that I have not, nor have any person or persons

in trust for me, any lands, money, stock or any other estate, real or personal in possession, reversion or remainder, of the value of the debt or debts with which I am charged in execution; and that I have not directly or indirectly sold,

lessened or otherwise disposed of in trust, or concealed all or any part of my lands, goods, money, stock, debts, securities or estate, whereby to secure the same, to receive or ex-

pect any profit or advantage thereof, to defraud or deceive any creditor or creditors to whom I am indebted in any wise however; and that I will, without fraud or deceit, deliver

up and convey to such persons, as the justices named in my petition may appoint, in trust and for the use of my credi-

tors, all my estate both real and personal, except so much as is exempt from execution;" which schedule being so sub-

cribed in the presence of the justices, shall be lodged with the clerk of the court, for the information of the creditors of such person or persons.

SEC. 15. Such person having subscribed and delivered a schedule, and taken an oath as aforesaid, shall by order of charge & appoint trustees, said justices be forthwith discharged, and the justices afore-

said, shall thereupon appoint trustees and proceed to a final determination of the case, agreeably to the provisions of this act.

CHAPTER LV.

An Act concerning Joint Rights and Obligations.

[APPROVED, DECEMBER 30, 1817.]

Joint estates,
made estates
in common.

Whereas much inconvenience and hardship has arisen to numerous citizens of this state, growing out of a principle of the common law of England, and adopted by this state, securing to the survivor or survivors of two or more joint tenants the part or parts of those deceased, to the preference and entire exclusion of the real and personal representatives of the deceased joint tenant: for remedy whereof,

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That all manner of estate or estates, either real or personal, legal or equitable, or thing possessed or helden by two or more in joint tenancy, the parts of those who may first die shall not accrue to the survivor or survivors, but shall descend or pass by devise, and shall be subject to debts, charges, courtesy or dower, or transmissible to executors or administrators, and be considered to every other intent and purpose, in the same manner as if such deceased joint tenant had been tenant in common.

Representative of a joint obligor to perform his joint contracts.

SEC. 2. That the representative or representatives of one jointly bound with another for the payment of debt or for performance or forbearance of any act, or for any other thing, and dying in the life time of the latter, may be charged by virtue of such obligation, in the same manner as such representatives might have been charged, if the obligors had been bound severally as well as jointly.

SEC. 3. This act to take effect from and after the publication of the same.

CHAPTER LVI.

An Act regulating the mode of summoning and empanelling Grand and Petit Jurors.

[APPROVED, JANUARY 31, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the commissioners of each county, shall at

their session in May annually, select from the persons returned as taxable, all the discreet householders and freeholders resident in such county, between the ages of twenty one and sixty, and direct the clerk of such county to write their names on ballots, and have the same deposited in a box to be kept for that purpose; and said commissioners shall at their session aforesaid, draw from said box, eighteen names for grand-jurors, and twenty-four names for petit-jurors, for each term of the circuit court, which may happen prior to the next session in May, of said commissioners; and the names aforesaid shall be put into a separate box, and whenever jurors afterwards are to be selected, their names shall be drawn from the first, and put in the second box, until all the names be withdrawn, when the second box shall be drawn from in like manner as aforesaid; and at each session in May, the names of such freeholders and householders, as may appear not to have been selected, wrote on ballots and deposited as aforesaid, shall be so added and deposited in the proper box; and the names of such as shall be not qualified, as the same may be discovered, shall from time to time be rejected from said ballots.

SEC. 2. The said commissioners, after having made the selection aforesaid, shall direct the clerk aforesaid, to write the names of the grand and petit jurors on separate panels, distinguishing for which term of the circuit selected; which panels, the said clerk shall record in the order book of the circuit court of such county.

SEC. 3. That the said clerk, shall at least thirty days before the sitting of any circuit, make out two writs, containing severally, the panels of the grand and petit jurors selected as aforesaid for said term; and the same under the seal of said court, direct to the sheriff of said county, commanding him to summon said jurors to appear at such term, at the court-house in said county, to attend to their several duties as jurors as aforesaid.

SEC. 4. Each and every person who shall be summoned as a grand or petit juror, under the provisions of this act, who shall after six days notice by the sheriff, neglect or refuse to attend, shall be fined in any sum not exceeding three dollars, at the discretion of the circuit court, on the motion of the prosecuting attorney; notice having first been given by scire facias or attachment, to the offending party, at least ten days previous to the making of such motion. But nothing in this act shall be so construed, as to prevent jurors from being obtained as at common law, to make up any deficiency in the regular panel.

Clerk to record the names of jurors selected.

Penalty on jurors neglecting to attend.

SEC. 5. That whenever hereafter, it shall appear to the board of county commissioners, by any law in this state, fixing the times of holding circuit courts, that any term of a circuit court is about to intervene in any county in this

Duty of commissioners when courts are changed.

state, before the expiration of thirty days after the time when it is made the duty of the county commissioners to receive the list of taxable property, for county and state purposes, they shall, and they are hereby authorized, to do all and every act, at their next preceding session, which is required of them by law at the time aforesaid; and the clerk and sheriff and all others, shall be governed in all respects, as if the selection of the jurors aforesaid were made, at the time prescribed in the first section of this act, except that the jurors required by law, may be selected from the list of taxable property, returned the preceding year.

CHAPTER LVII.

An Act regulating the Jurisdiction and Duties of Justices of the Peace.

[APPROVED, JANUARY 20, 1824.]

Jurisdiction of j.p. in criminal cases.

Recognize witnesses.

Return recognizance.

J. p. may punish petit misdemeanors.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the jurisdiction of justices of the peace in criminal cases, shall be coextensive with the limits of the county where they shall be respectively chosen, and they shall be conservators of the peace throughout the same; and each justice is authorized and required on view or complaint made on oath, to cause any person charged with a crime, to be arrested and brought before him or some other justice of the peace in said county, and such person to commit, discharge, or let to bail, and recognize such witnesses as the nature of the offence shall or may require; conditioned that such witnesses shall attend on the first day of the next circuit court to be holden in the county, before whom the offence shall be tried, to give testimony, and not depart without leave of the said court; and all recognizances thus taken, shall be returned by the justice taking the same, into the said court or courts in person, or be transmitted by him to the prosecuting attorney or the clerk of the proper county, at as early a time as may be convenient, before the sitting of such court.

SEC. 2. It shall be the duty of justices of the peace to inquire into, and in a summary way to punish by fine not exceeding three dollars, all trivial breaches of the peace, and judgment give and execution award; and such fines when collected, to pay over to the trustee of the county seminary; and when upon examination it shall appear that three dollars would not be an adequate punishment, it shall be their duty to recognize such offenders and the witnesses, to the next circuit court as aforesaid.

SEC. 3. The powers of justices of the peace, shall be co-

extensive with the townships in which they may respectively be elected and reside, in civil cases; and their jurisdiction in civil cases, shall extend under the restrictions and limitations hereinafter provided, to any sum not exceeding fifty dollars. Any justice of the peace may grant subpoenas for witnesses for either party concerned in the cause pending, but such party shall not be allowed fees for travelling and serving the same, if performed by himself; and the power of justices of the peace shall be coextensive with the county to summon witnesses: *Provided*, that if any person Prove, or persons shall voluntarily appear before any justice of the peace and confess judgment, in such case the jurisdiction of the justice may extend to one hundred dollars, and execution on such judgment shall issue as in other cases, from which judgment there shall be no appeal; and it shall be the duty of every justice of the peace, whenever any person or persons shall so appear to confess judgment, for any sum not exceeding one hundred dollars, to require an oath or affirmation of the party so appearing to confess any judgment, which oath or affirmation shall be as follows, to wit:

I A. B. do solemnly swear or affirm, (as the case may be,) Form of oath that I do not confess judgment in favour of, (*here name the person or persons in whose favour the judgment is confessed,*) to defraud any of my creditors, but that I am justly indebted to, (*here name the person in whose favour judgment is confessed,*) to the full amount for which I have confessed judgment, which oath or affirmation shall be made known to such person or persons applying to confess judgment, by the justice, before he administers the same, and before he enters judgment. But any creditor or creditors of the person or persons confessing judgment as aforesaid, may at any time after such confession of judgment, and after giving the plaintiff in the original judgment five days previous notice, if within the county, and if out of the county, after filing a written notice of such intended motion, with the justice before whom the original judgment was rendered, ten days previous thereto, and before issuing execution thereon, prove before the justice who may enter up such judgment, the want of consideration whereon to form such judgment, or that such judgment was confessed with a view or design to defraud some creditor or creditors, of his, her, or their just demand; in that case the judgment so aforesaid confessed, shall be of no validity or effect in law or equity, and the person confessing such judgment, as well as him, her, or them, in whose favour such judgment shall be confessed, shall upon conviction thereof, in any court having competent jurisdiction, by indictment or presentment, be fined in any sum not exceeding the amount of such judgment so as aforesaid confessed: *Provided also*, that executions shall not issue on any such

Jurisdiction of j. p. in civil cases.

Judgments confessed may be vacated for fraud.

Penalty on person fraudulently confessing judgment.

Justices of the Peace.

confessed judgment, until after the expiration of three months, from the time of such confession.

J. p. to keep docket & furnish transcript.

Summons to issue against householders.

How served.

When warrant may issue against householder.

Proceedings when plaintiff lives out of the township.

Venue.

Process against non-resident.

SEC. 4. Every justice of the peace shall keep a docket, in which he shall make fair and accurate entries of all actions and suits instituted before him, with his proceedings thereon; and if either of the parties require a copy of the proceedings, the justice shall furnish the same, on the payment of the costs of the transcript, by the person applying therefor.

SEC. 5. Where the defendant is a householder within the county, and resides within the same, a summons shall be the first process to be issued by virtue of this act, on which summons the justice shall endorse the precise sum demanded by the plaintiff, together with the costs that have accrued, and the summons to be issued as aforesaid shall specify a certain time, not less than three, nor more than twenty days from the date of the process, and also a certain place at which the defendant shall appear, and be served at least three days before the time of such appearance, by reading the same to the defendant, or by serving him or her with a copy if required. But in all cases where it shall be sufficiently proved on the oath or affirmation of any person, that the plaintiff will be in danger of losing his or her demand, unless the defendant be arrested, it shall be the duty of the justice to issue a warrant in nature of a capias, which shall be proceeded on as hereinafter provided; but where the plaintiff lives out of the county or township, and his demand shall be on bond, promissory note or bill, sent to any justice of the peace for collection, in that case the justice shall determine the most proper precept to secure the debt to the plaintiff, any thing herein contained to the contrary notwithstanding: provided that no person shall be bound to answer to any summons or warrant in civil cases, issued by a justice of the peace, in any other township, except the one in which such defendant actually resides, or where the debt was contracted or the cause of action accrued, or where the defendant may be found, unless there shall be no justice of the peace within said township, who can legally issue said summons or warrant.

SEC. 6. A warrant in nature of a capias ad respondentum, shall be the proper process under this act, in all cases where the defendant shall not be a resident and householder of the county, where such process issued; upon which the justice shall endorse the precise sum demanded, together with the costs that have accrued, and the said warrant shall be made returnable forthwith after service thereof, and the constable serving or executing the same, shall according to the command thereof, forthwith convey the defendant before the justice, who shall thereupon either cause the defendant to give bail, for his, her or their appearing, and abiding the

Justices of the Peace.

event of said suit, or on neglect or refusal to give such bail, order the constable to convey him or her to the jail of the county, there to be kept in custody until the time appointed for the trial of the cause, which shall not exceed three days, unless for good cause shewn, from the day of the return of the warrant; or the justice may direct the constable to hold the defendant in his custody, until the plaintiff shall have notice and time to attend, not exceeding two days, and proceed to trial; and the constable who serves such warrant, shall endorse thereon the execution thereof, and sign his name thereto.

SEC. 7. The recognizance of bail to be taken as is above provided, may be in the following form, to wit: State of *Form of bail bond.* Indiana, county, township, sc^t: Whereas A. B. has been arrested and in custody, at the suit of C. D. in an action of , for the sum of ; now therefore you E. F. do acknowledge yourself special bail in the said action, in the sum of , to be levied of your goods and chattels, lands and tenements, and for the want thereof upon your body, if default be made in the condition of your recognizance, which condition is, that the said A. B. shall be and appear before , and if judgment be given against him or her, that he will pay the costs and condemnation money, or render his body in execution. Acknowledged before me, . Which recognizance shall remain with such justice for the benefit of the plaintiff in the suit, and if the defendant shall not appear at the time and place specified in the recognizance, and no sufficient reason be assigned to said justice why he does not appear, then the said justice may proceed to hear and determine said cause in the absence of the defendant; and when the parties to any suit to be instituted by this act, shall appear at the time and place appointed for trial, the said justice shall proceed to hear and determine such allegation and proofs, and shall thereupon give judgment, with costs of suit, according to law and equity, unless he shall think proper on the application of either party, to adjourn the trial; which adjournment shall not be for a longer time than twenty days.

Defendant failing to appear, suit may be determined in his absence.

Suit, when continued.

SEC. 8. In all cases before a justice of the peace, where either party makes affidavit that he has a material witness or witnesses out of the state or county, or that the place of his own residence is out of the state or county where the cause is pending, it shall be the duty of the justice on good reason shown, by affidavit or otherwise, to postpone the trial for any time not exceeding two months; and if required by the party, to issue a *dedimus* to any justice of the peace residing in the county and state, where the witness resides, commanding him at such time and place as mentioned in the notice, to cause such witness or witnesses to come before him, and carefully to examine him, her or them,

J. p. may continue cause.

Issuededimus.

Depositions
how taken.

touching the premises, allowing each party to ask questions, and the deposition or depositions so taken, to seal up and transmit to the justice who issued the *deditus*, taxing on the deposition or depositions, the fee for taking the same; but no *deditus* shall be necessary where the witness or witnesses reside within this state.

SEC. 9. If on the return of any summons or capias before any justice of the peace, the defendant shall make oath that he verily believes he cannot receive a fair trial, owing to the prejudice of the justice before whom the summons or capias shall be returned, or of the citizens of the township in which the justice resides, or that the other party has an undue advantage over him in such township, in such case, a certified copy of the oath shall be filed with the justice who issued such summons or capias, before the same shall be called to trial; and such justice shall grant a change of venue before any other justice in the proper township, on such defendant paying the costs which may be caused by such change; but if there be no other justice in the township, who shall be disinterested to the parties named in such summons or capias, it shall be lawful for such justice to grant such change of venue to any justice of the peace in an adjoining township, who may be disinterested, and the same proceedings shall be had thereon, as if the same had been made returnable before him in the first instance. The plaintiff shall also be entitled to a change of venue on good cause as aforesaid shewn, and on the payment of all costs which may have accrued, previous to granting such change.

Trial by con-
sent of parties.

SEC. 10. When the parties agree to enter without process before any justice of the peace, any action herein made cognizable before him, such justice shall enter the same on his docket, and proceed to judgment and execution in the same manner, as if a summons or warrant had been issued, served, and returned; and in all other actions instituted by virtue of the provisions of this act, where the plaintiff shall not appear by himself or agent, and it appearing that he was informed of the day of trial, if his claim shall not be established by testimony, either oral or written, the justice shall enter judgment against him as in the case of a non-suit.

Judgment to
be entered in
four days.

When for de-
fendant on ba-
lance due.

SEC. 11. Every judgment by any justice of the peace in any cause, shall be entered within four days after the trial of the same; and if in any cause instituted under the provisions of this act, it shall appear at the trial thereof, that there is a balance due from the plaintiff to the defendant, the justice shall enter up judgment against the plaintiff, in favour of the defendant, for the sum so appearing to be due, with costs of suit; and such defendant shall be entitled to execution, in the same manner, as if such defendant had been plaintiff in the cause.

SEC. 12. If any defendant should not appear by himself, ^{Judgment by} default, herself or agent, at the time and place appointed for trial, having had lawful notice, and no just cause appearing for his or her non-attendance, the justice may at the request of the plaintiff, hear and determine the cause and enter up judgment.

SEC. 13. When any judgment has been entered against the defendant in his absence, if he appear before sale on execution, pay or give security for the costs, and request the judgment to be opened, the justice shall grant a new trial, and appoint a day therefor, of which the defendant shall notify the plaintiff, at least six days prior to the day appointed; but stay of execution shall only be prolonged from the date of the former judgment; and in all other cases tried before a justice of the peace, the justice may grant new trials, on the motion of either party, according to the usages and customs of courts.

SEC. 14. Where there is no justice of the peace resident in the proper township, or the justice shall be father, brother or son, to either the plaintiff or defendant, then the justice who is nearest and most convenient in an adjoining township, who is not interested, shall have full and complete jurisdiction of any such cause or action.

SEC. 15. At any time before judgment is entered, the plaintiff and defendant agreeing thereto, may have the cause submitted to three disinterested men, who shall be chosen by the plaintiff and defendant as arbitrators, and if they be present, they shall hear and determine the cause on oath or affirmation, which shall be administered by the justice; but if the arbitrators chosen be not present, the justice shall issue subpensas for them to attend at a certain time and place fixed upon, which shall be served by the constable or parties as they may agree, and when the arbitrators are met and qualified, they shall hear and determine the cause,

make out an award and sign the same, and make return thereof to the justice, who shall enter the same on his docket and thereon render judgment, which judgment rendered on such award, shall be conclusive both to the plaintiff and defendant, unless it shall appear to the circuit court on an appeal, or to the justice of the peace who rendered such judgment, and within ten days after the rendition of the same, that such award was obtained by fraud, corruption or other undue means; and whenever satisfactory proof thereof shall be adduced before such justice within the period aforesaid, it shall be lawful for such justice to open his judgment and set such award aside, and thereupon proceed

to such final trial and judgment, as if such award had never been made; and all arbitrators acting under the provisions of this section, shall be entitled to fifty cents per day for compensation to arbitrators.

Justices of the Peace.

their services, and the same shall be taxed and collected as other costs are.

Circuit court
may vacate
award, for
fraud.

Appeal to cir-
cuit court
may be had
within thirty
days from
judgment.

Security for
costs.

J. p. to send
up transcript
and original
papers.
When filed.

When dock-
eted.

Circuit court
determine ap-
peals in sum-
mary way.

SEC. 16. If upon an appeal from a judgment of a justice of the peace, rendered upon an award according to the provisions of the preceding section, the circuit court shall be satisfied that such award was obtained by fraud, corruption or other undue means, they shall order such award to be vacated, and proceed to hear and determine the cause upon its merits, as in other cases of appeal; and if upon appeal as aforesaid, it shall not appear to the court that the award was obtained by fraud, corruption or other undue means, they shall proceed to final judgment in such manner, as the justice of the peace ought to have done.

SEC. 17. That if any person shall conceive himself aggrieved by any judgment of a justice of the peace, (other than judgment by confession) it shall be lawful for such person to appeal from such judgment, to the circuit court for the proper county, at any time within thirty days after the rendition of the judgment, by first filing a bond payable to the appellee, with good security in a sum sufficiently large in the opinion of the justice, to satisfy the debt, interest and costs which had accrued before such justice, and which may accrue in the circuit court, conditioned that the appellant shall pay the full amount of the debt, interest and costs which have accrued, and which may accrue in the circuit court, if judgment be there given against him, which bond shall be filed with said justice; and no suit shall be dismissed by any court on account of the informality or insufficiency of such bond, if the appellant will on the calling of the cause, file a bond with security to be approved of by the court; and it shall be the duty of the justice of the peace, if execution shall have issued, to recall the same and make out a certified transcript of such judgment, under his hand and seal, which transcript with the original bond, and all the papers filed in the cause, shall be filed by the appellant in the clerk's office of the proper county, at least ten days prior to the first day of the next circuit court, if there be sufficient time before court; but if there be not time as aforesaid, then the appellant shall file the same on or before the first day of the next circuit court holden after said appeal, and the appellee shall not in such last mentioned case, be compelled to go to trial at that term; and after a transcript of such judgment is filed as aforesaid, the clerk of the court shall docket the same as in other cases; and all further proceedings before such justice, shall be stayed from and after the taking of said appeal, and the court shall hear and determine the same in a summary way, unless when the cause of action shall exceed twenty dollars, and either party require a jury, when the same shall be tried as all other cases, except no pleadings shall be required; and

Justices of the Peace.

the court may in its discretion, require the plaintiff to state truly the nature of his demand, and the defendant his defense, and the costs which appear to have been taxed by the justice, and endorsed on the transcript, shall be included in the costs above, and included in the judgment; but if the appeal be not filed with the clerk of the county as provided for by this act, the clerk shall certify the same on the application of the appellee, and such certificate being filed with the justice who rendered such judgment, shall be sufficient authority for him to issue execution on such judgment, in the same manner as if such appeal had not been taken: *Provided*, that if the person or persons in whose favour judgment shall have been rendered, shall appeal, and shall not recover more than he, she or they recovered before the justice, in such case the appellant shall pay all costs accruing on such appeal: *Provided*, that the circuit court, on affidavit filed by the party praying such appeal, his or her agent, may authorize an appeal after the expiration of thirty days from the rendition of such judgment, if it shall appear by such affidavit, that the said defendant was prevented from taking his said appeal from unavoidable circumstances, or from the improper conduct of the justice who rendered such judgment, and that he has merits in such appeal.

SEC. 18. In all trials of debt, assumpsit or account, before any justice of the peace, it shall be lawful for the plaintiff if the defendant deny the debt, demand or account, to require said defendant to answer on oath or affirmation to such charge, and if said defendant thereupon deny the same, the plaintiff shall not have judgment unless he shall establish his claim; and whenever the defendant shall allege matter in payment of the said plaintiff's demand, he may in like manner, and subject to like rules (except in the absence of the plaintiff, then the matter shall be sworn to,) require the said plaintiff to answer such allegation on oath or affirmation, and on refusal to answer, the justice shall enter up judgment as if the matter alleged was confessed by the plaintiff.

SEC. 19. On judgments rendered by justices of the peace, on all causes of action, on the defendants entering good and sufficient security on the justices docket, before whom such judgment was rendered, for the amount of such judgment, interest, and costs, there shall be a stay of execution, if the sum shall not exceed six dollars, thirty days; if over six, and not exceeding twelve dollars, sixty days; if over twelve, and not exceeding twenty dollars, ninety days; if over twenty, and not exceeding forty dollars, one hundred and twenty days; if over forty, and not exceeding one hundred dollars, one hundred and fifty days; and if the person against whom judgment was rendered, shall refuse or neglect to en-

Costs below
taxed with
costs above,

How appellee
shall proceed,
appellant fail-
ing to enter
appeal.

When appellee
shall pay
costs.

When parties
shall answer
on oath.

Stay of execu-
tion.

Execution
when issuable
& returnable.

Notice of sale
how given.

Scire facias
against bail.

Chattels
bound from
date of execu-
tion.

How security
shall proceed
on apprehen-
sion of prin-
cipal's insolv-
ency.

Additional se-
curity may be
taken.

ter such bail, and shall fail to pay to the person or persons recovering such judgment, or his agent, the full amount of debt, together with the costs of suit, it shall be the duty of the justice who gave such judgment, on the request of the party recovering the same, or his agent, to grant execution thereon, returnable to such justice within thirty days thereafter, commanding the constable to levy and make the debt or damages and costs, out of the goods and chattels of the party against whom the judgment was rendered; but if the defendant shall enter sufficient bail for the stay of execution within ten days, or previous to the sale of property taken as aforesaid, the justice shall recall the same. All property sold by execution, shall be advertised by the constable at three of the most public places in the township, where the same was executed, at least ten days previous to the day of sale; and where bail is entered for the payment of the debt and costs, the first process shall be an execution against the goods and chattels of the defendant, and if goods and chattels cannot be found of the defendant's, sufficient to pay the execution, and a return be made thereon by the constable, the justice if required by the plaintiff, his, her or their agent, shall issue a scire facias against the bail, and the same shall be served and returned by the constable, in the same manner as summonses are served and returned; and upon the return thereof, the justice shall, unless good cause be shewn, enter judgment, and forthwith after demand, issue execution against the bail for the amount of such judgment and the costs, or such part thereof as shall remain unsatisfied, to be returned in the same manner, as executions are in other cases; and when judgment shall be obtained against the bail as aforesaid, there shall be no stay of execution.

SEC. 20. The personal property of defendants shall be bound, from the date of execution issued by justices of the peace.

SEC. 21. Where any person shall enter security upon the docket of any justice of the peace for stay of execution, according to the provisions of the foregoing section, if such security shall become apprehensive that by delaying execution until the full term of the stay thereof has expired, such security may be compelled to pay the judgment, such security may go before the justice of the peace, upon whose docket he stands as security, and make and file an affidavit, that he is apprehensive of being compelled to pay the judgment, in case the execution be further delayed, and thereupon at the request of such security, the justice shall issue an execution against the principal debtor, which shall be proceeded on as in other cases. But if within ten days after levying such execution, the principal debtor shall give additional security to the satisfaction of the justice, for the stay of execution for the time not expired, and shall pay the

costs of such execution, the execution shall be taken back and stayed, and the subsequent proceedings shall be the same, as though no execution had issued, except that in proceeding against such security, a scire facias shall be issued against the person last entering security in the first place, and no scire facias shall be had against the first security.

SEC. 22. Whenever judgment shall be obtained against any person who shall have entered himself bail on the docket of any justice of the peace, agreeably to this act, the original judgment for stay of execution, on which such person was entered bail, shall remain good and valid in law, for the use of such bail, who may at any time thereafter sue out execution on such judgment, for the use of such bail, which shall be endorsed by the justice; and such bail shall also be entitled to a transcript of such judgment for his own use, which shall have the same force and effect, as transcripts in other cases.

SEC. 23. In all cases where execution shall issue on judgments rendered against any person, and goods and chattels cannot be found to discharge the same, in case it should be made known to the justice who issued such execution, that the person is possessed of lands and tenements, the justice shall, on application of the plaintiff or his agent, forward a transcript of such judgment to the clerk of the circuit court, who shall file the said transcript in his office, and shall issue a scire facias against such person, to appear at the next term of the circuit court, and shew cause why execution should not issue, and in case such person neglects to attend, or does not shew cause to the satisfaction of the court, why execution should not issue, the court shall direct execution against the goods and chattels, lands and tenements of such person, in the same manner as though judgment was obtained in said court. The provisions of this section shall extend to the lands and tenements of decedents' estates, on judgments rendered against them previous to their death, and the scire facias shall be served on their executors or administrators, and two returns of *not found* on a scire facias, shall be deemed as sufficient authority for the court to proceed to judgment and execution, against the lands of a defendant, as if a personal service had been made.

SEC. 24. In all cases where the plaintiff shall not reside within the county, where he intends to bring suit, the justice before whom he intends to have the same entered, may previous to his issuing process, or entering the same, cause such plaintiff to enter sufficient bail, resident within his proper county, conditioned for the payment of all costs which may accrue upon such suit, which bail shall be by such justice entered on his docket, and signed by the bail, who shall be accountable for all costs.

SEC. 25. In case the constable fails to make return as

Bail may have
execution
against prin-
cipal.

For want of
personal prop-
erty, how ex-
ecution may
issue against
real estate.

Non-resident
to give securi-
ty for costs.

Proceedings
against con-
stable for ne-
glect of duty.

provided by this act, or makes false return, the justice shall, on application of the person or persons in whose favour execution has issued, or his, her or their agent, issue a scire facias against said constable, directed to any person he may think proper, who will serve the same, commanding said constable to appear and shew cause, if any he can, why execution should not issue against him; and if the constable neglects to appear within four days, or does not shew cause why execution should not issue against him, then the justice shall enter judgment against such constable for the amount of such execution, together with costs and ten per centum thereon, on which judgment there shall be no stay of execution; and such execution may be directed to any person the justice may think proper, who will serve the same; who shall collect the amount of said execution, in the same manner as the constables by this act are authorized and bound to do, together with such costs as constables receive for similar services: *Provided*, that the original defendant shall not thereby be exonerated from the original judgment, unless the same shall have been paid; but shall be liable to the said constable for the same, on scire facias, to be issued and served as in other cases; and the said constable shall have execution on the same for his benefit.

SEC. 26. In all cases where it shall be necessary to have process served, either in criminal or civil cases, and the constable of the proper township shall be absent, or there be no constable in said township, it shall be lawful for any justice of the peace in said township, to appoint a person willing to serve as constable, until the return of such absent constable, or one shall be legally appointed; and the person so appointed, after being duly sworn to discharge the duties of his office shall have the same authority as any other constable; and such justice shall stand as security, and be liable for neglect of duty or illegal proceedings; and the said constable shall receive the same fees and compensation as constables are entitled to by law, for similar services.

When j. p.
may appoint
constable.

J. p. to re-
ceive and pay
over money.

SEC. 27. It is hereby made the duty of justices of the peace, to receive from the constables, all monies by them collected, and pay the same over to the person or persons entitled thereto; also all monies by them collected without execution, or received for the use of any person or persons in their official capacity. And if any justice shall fail to pay over any money, by him collected or received, when thereto demanded by the person entitled to the same, or his agent, at the office of such justice, he being present, it shall be lawful for such person aforesaid, to complain to some justice of the peace of that township in which the delinquent justice resides, if any there be, and if no justice resides in the township capable of acting, then to some justice of an adjoining township, whose duty it shall be imme-

dately to issue a summons to the constable of his township, commanding him to summon such delinquent justice forthwith to appear before him, and shew cause, if any there be, why judgment should not be entered against him for the amount of money, by him so collected and not paid over; and if such delinquent justice shall not shew good cause, the justice issuing the summons, shall render judgment against him for the amount of the money so collected and not paid over, together with ten per centum in damages, and in such case there shall be no stay of execution.

Proceedings
against j. p.
for failure
thereof.

SEC. 28. In all cases where the constable shall make it appear to the satisfaction of the justice, that he has been deprived of an opportunity of levying any execution directed to him, within the time prescribed by this act, or otherwise prevented from making the whole of the money therein required to be made, and make a return to the justice who issued the same, to that effect, such justice is hereby authorized and required to issue another execution, if thereunto required, for the balance or the whole of the execution remaining unsatisfied, which shall be served and returned in all respects as other executions.

In what case
an alias exe-
cution may is-
sue.

SEC. 29. When any person shall be lawfully subpoenaed to attend and give testimony, in any suit instituted before any justice of the peace, and shall fail to attend at the time and place specified in such subpoena, and when no reasonable excuse is given for his or her non-attendance, every such person shall forfeit and pay a fine not exceeding three dollars, at the discretion of the justice, and moreover be liable to the party injured for such damages, as the person or persons shall sustain for the want of such witness, to be recovered before any justice of the peace, or court having cognizance thereof; and every justice before whom any cause is depending and may be decided, shall issue an attachment for every person so failing, on the application of the person who may be injured thereby.

Penalty on
witnesses fail-
ing to obey
subpoena.

SEC. 30. If any person shall order a subpoena for more than two witnesses to prove any one fact, the person so ordering the subpoena shall pay such witness or witnesses, or in case any witness shall be subpoenaed and not examined by either of the parties, the party ordering the subpoena, shall pay such witness, except the defendant confess judgment, or where the plaintiff shall be nonsuited.

Witnesses by
whom paid.

SEC. 31. When any living animal shall be taken in execution, it shall be the duty of the justice who issued the execution, to make such allowance to the constable for keeping the same, as he may think reasonable, not exceeding twenty-five cents per day for a horse, and in the like proportion for other animals.

Allowance for
keeping live
stock.

SEC. 32. In all civil cases to be tried before any justice of the peace, at the request of either the plaintiff or defend-

ant, such justice shall direct the constable to summon and cause to appear before him, twelve lawful citizens resident of stich county, neither of whom shall be related to either party, or interested in such suit, who shall be empanelled to try such cause; but before they proceed therein, such justice shall administer to them the following oath or affirmation, viz:

Jurors' oath. "You and each of you do solemnly swear or affirm, (as the case may be,) that you will well and truly try the cause submitted to you by A. B. plaintiff, and C. D. defendant, and a true verdict give according to evidence, to the best of your judgment and ability, *So help you God;*" (omitting in case of affirmation the words, "So help you God," and using the words, "Under the pains and penalties of perjury.") And it shall be the duty of the justice, to enter up judgment upon the verdict of such jury, in favour of either the plaintiff or defendant, as the case may be, and proceed to execution as in other cases; and in all actions instituted before any justice of the peace, where the plaintiff shall demand of the justice before whom such action shall be pending, a trial by jury, and the jury so demanded, shall not return a verdict for such plaintiff for the sum of twenty dollars or more, such plaintiff shall pay all the costs, which shall accrue in consequence of such trial by jury as aforesaid.

When plaintiff shall pay costs, on demanding jury. SEC. 33. If any juror or arbitrator, shall neglect or refuse to appear before any justice of the peace, when duly summoned, such juror or arbitrator as the case may be, shall forfeit and pay for every such offence fifty cents, for the use of county seminaries, recoverable before any justice of the peace in the proper county, unless such juror or arbitrator shall have a reasonable excuse for his non-attendance.

Penalty on jurors refusing to serve. SEC. 34. If any person shall claim any property, taken in execution by a constable, other than the person against whose property such execution shall issue, the right of property shall be tried by a jury of five discreet householders, to be resident in said county, to be summoned by the constable who executed the property; and it shall be lawful for the constable to administer an oath to said jury, to inquire into and try the right thereof; and if such jury shall find the right of such property to be in the claimant, or any other person, than the defendant in such execution, the said constable shall deliver up such chattels, goods, and effects, to the person or his agent, in whom the right of property shall have been found by such jury, and the constable shall not be liable to any prosecution for the taking of such goods, chattels, rights, and effects, if found in the possession of the defendant, or directed to be taken by the plaintiff; and all reasonable costs accruing by such inquiry, shall be taxed by the justice against the plaintiff in execution; but if the right of property be found in the defendant, then such costs shall

Right of property, how tried.

be paid by the claimant, and the justice shall tax the same, and enter up judgment therefor; and in all cases where the right of property shall be disputed by any claimant, and trial had thereon, the decision may be appealed from to the *Appeal to circuit court.*

SEC. 35. If any justice of the peace shall move out of the *J.p. removing, how to dispose of his docket.* township in which he was elected, or shall absent himself therefrom, for the space of thirty days, he shall deposit his docket and other papers belonging to his office, in the hands of the nearest justice of the peace in his township; or if there should be none in his township, with the nearest justice of the peace in his county, taking his receipt therefor, to be kept by the justice with whom it is deposited, until such justice by whom it was deposited shall return; or if his office is vacated, until a successor be elected and qualified, to enter upon the duties of his office; and the justice with whom such docket is deposited, shall on application of the person depositing the same, or the successor of such person in office, deliver such docket and other papers, into the hands of the person so applying therefor, and shall take a receipt for its delivery from the person applying for, and receiving the docket.

SEC. 36. Any justice with whom the docket of another justice shall be deposited, is hereby authorized to transfer to his own docket, any judgment on the docket left with him, that may be due, before it shall be delivered up, at the request of the person in favour of whom such judgment was rendered, and to issue execution thereon in the same manner, as if the suit had been originally instituted before him, and shall note "Transferred to the docket of _____," on the docket from whence it is transferred.

SEC. 37. It shall be the duty of each person, who may hold the docket of any justice of the peace, absenting himself from the township in which he was elected, without complying with the provisions of this act, to deliver the same up to some justice of the same township, when thereunto required; and should any person holding the docket of any justice of the peace as aforesaid, neglect or refuse to comply with the provisions contained in this section, every such person so failing or refusing, shall on conviction be fined in any sum not exceeding five hundred dollars, and shall moreover be liable to be sued by any person injured thereby, in any court having competent jurisdiction.

SEC. 38. In all cases where a transcript of a judgment of any justice of the peace, within this state, shall be certified and signed by the justice rendering the same, and delivered to another justice of the peace, for the purpose of enforcing the execution of the same, the justice to whom the transcript is delivered, shall make an entry thereof on his docket, and shall issue a scire facias against the apparent

Judgment how transferred.

Penalty on persons detaining justices' dockets.

Mode of proceeding on transcripts of judgments.

defendant in such transcript, requiring such person to appear and shew cause, (if any there be) why execution should not issue against him for the amount of the judgment and costs, as stated in said transcript, or such justice may issue a warrant in nature of a *capias ad respondentum* against such defendant; and in either case, if the defendant cannot prove to the satisfaction of the justice, that he had paid the whole amount of the debt as stated in the transcript, the justice shall hold him to bail, or issue an execution for the same, or such part thereof, as shall appear to remain unsatisfied, in the same manner, and under the same regulations, as the justice before whom the proceedings were originally had, might or could have done, had the defendant remained within his township or county; but stay of execution shall only be had from the date of the original judgment. And in all cases where any person or persons, who may have entered security for the stay of execution upon any justice's docket, shall remove from the county where such justice resides, and upon proceeding as herein before provided, against the original defendant, the constable shall return, that no goods or chattels can be found, to satisfy the judgment, the justice before whom such security was entered, upon application of the plaintiff or his agent, shall give a transcript of the judgment, recognizance of bail for stay of execution, and other proceedings; upon which transcript any justice of the peace of the county where one or more of such securities may reside, may proceed against such security or securities by *scire facias*, or *capias ad respondentum*, as in other cases of transcript; and any justice of the peace may issue an execution, on any judgment on his docket, against any person or his goods and chattels; and the constable to whom the same is directed, is hereby authorized to serve the same, in any part of the county where such person or persons, or his, or her goods and chattels may be found. If any justice of the peace shall refuse or neglect, to give to either party, in any cause tried before him, a certified transcript of his proceedings in such trial, or to perform any other duties required of him, by the provisions of this act, and shall not render a reasonable excuse therefor, he shall be fined in any sum not exceeding one hundred dollars, by presentment or indictment, in any court of competent jurisdiction, and moreover be liable to the suit of the party injured: provided, the person demanding the same shall tender to such justice his legal fees, for such transcript or other proceeding.

SEC. 39. It shall not hereafter be lawful for any justice of the peace to purchase directly or indirectly, any judgment, or any part thereof on his docket; nor shall any constable purchase any judgment of a justice of the peace in his county, or any part of a judgment, either directly or in-

*Proceedings
against bail
removing out
of the county.*

*Executions
may be served
throughout
the county.*

*Penalty on j.
p. for neglect
of duty.*

*Justices & con-
stables pro-
hibited from
purchasing
judgments.*

directly; and if any such justice of the peace or constable, shall be guilty thereof, he or they so offending, shall be fined for each offence, upon conviction thereof, by presentment or indictment, in any sum not exceeding one hundred dollars, nor less than five dollars, with costs of prosecution, for the use of county seminaries.

SEC. 40. Nothing in this act shall be so construed, as to give to a justice of the peace, jurisdiction in any action or suit, for the recovery of damages, for any trespass, wrong, or injury done to, or committed against the real or personal estate, or person of another, where the damages claimed shall exceed twenty dollars; nor in any case of trover and conversion, where the damages claimed shall exceed twenty dollars; nor in any case where the title of lands or tenements shall come in question; nor in actions of slander; nor in any action for the recovery of damages, for the breach of any marriage contract. But all suits wherein the sum demanded or due, shall not exceed fifty dollars, exclusive of interest and costs, shall be commenced before a justice of the peace; and suits on all notes, due bills, or other instruments of writing given for the payment of money, or other valuable articles, that have been reduced by credits endorsed thereon, to an amount not exceeding fifty dollars, exclusive of interest and costs, shall be commenced before a justice of the peace; and should any person contrary to the foregoing provisions, commence a suit in the circuit court, such person shall pay all costs accruing thereon.

SEC. 41. Attorneys or counsellors at law, shall be eligible to the office of a justice of the peace; but no attorney who holds a commission as a justice of the peace, shall appear in the circuit court in any civil cause, as an attorney or counsellor in any case, that originated before any justice of the peace, within the county where he holds his commission, nor in any criminal case where he has acted as a justice.

SEC. 42. It shall be the duty of each and every justice of the peace, whenever he assesses and collects a fine from any individual, to give him a receipt therefor in writing, specifying at full length the amount of the fine, and the cause for which it was inflicted; and whenever any justice of the peace shall receive from any constable, sheriff, or other officer, any fine or penalty by such officer collected, by virtue of the power and authority of such justice of the peace, it shall be the duty of such justice to give such officer a receipt in writing, specifying at full length the amount of such fine, and the cause for which it was inflicted; which receipt the said officer shall preserve, and on the first day of the term of the circuit court of his county, shall file with the clerk of said circuit court. It shall further be the duty of each and every justice of the peace, to make out a list of

*Limitation of
justices juris-
diction.*

*Attorneys and
counsellors,
eligible to the
office of j. p.*

*Justice to re-
ceipt for fines.*

*Officer shall
file such re-
ceipt with clrk
of c. court.*

Justices of the Peace.

J. p. shall record list of fines.
Return list thereof to circuit court.

Penalty on j. p. for neglect of duty.

all fines and penalties by him assessed on, and collected, of each and every individual, and record said list in a book to be kept for that purpose; and on the first day of each term of the circuit court of his county, to return a list of all fines imposed and collected by him, since the preceding session of said court; which list shall be certified under the oath or affirmation of such justice; said oath or affirmation to be administered by the clerk of said court; and for every failure to make such return, according to the provisions of this section, such justice shall forfeit and pay a sum, not exceeding one hundred and fifty dollars, to be recovered by presentment or indictment; and if any justice shall make out and certify a false list or statement of fines, such justice on conviction, shall be held guilty of perjury, and be liable to all the pains and penalties thereof.

Forms for Justices of the Peace.**FORM OF A SUMMONS.**

State of Indiana, *county, sct:*
 To , constable of township, GREETING:
 You are hereby commanded to summon to appear before me , a justice of the peace of said township, on the day of , at o'clock on said day, to answer in a plea of debt or damages, (as the case may be) under fifty dollars; and of this summons make due return.

Given under my hand and seal, this day of 18 .
 J. H. J. P. [SEAL.]

FORM OF A CAPIAS.

State of Indiana, *county, sct:*
 To , constable of township, GREETING:
 You are hereby commanded to take the body of , and him forthwith bring before me a justice of the peace for said township, to answer in a plea of debt or damages, (as the case may be) under fifty dollars, and of this writ make due return.

Given under my hand and seal, this day of 18 .
 S. M. J. P. [SEAL.]

SUBPOENA.

State of Indiana, *county, sct:*
 To , constable of township, GREETING:
 You are hereby commanded to summons to appear before me , a justice of the peace for said county, on the day of 18 at , and the truth to say in a matter of controversy wherein is plaintiff and is defendant, in behalf of the plaintiff or defendant, (as the

Justices of the Peace.

case may be,) and this he shall in no wise omit under the penalties prescribed by law; and of this subpoena make due return.

Given under my hand and seal, this day of 18 .
 S. M. J. P. [SEAL.]

JUDGMENT.

P. S. Plaintiff, } vs. } Debt or damages, (as the case may be.)
 J. D. Defendant. }

This day came the plaintiff and the defendant, and the cause and the proceedings being fully heard and inspected, and all things touching the same, therefore it is considered that the plaintiff recover of the defendant, dollars, with interest thereon from the day of until paid, with costs of suit, and the defendant in mercy, &c. or the plaintiff in mercy, (as the case may be.)

EXECUTION.

State of Indiana, *county, sct:*
 To constable of township, GREETING:
 Whereas obtained judgment against before me, a justice of the peace for said township, for dollars, with interest thereon from the day of until paid, together with costs on the day of last, you are therefore commanded of the goods and chattels of the said , to cause to be made the said debt, interest and costs, by distress and sale thereof, returning the overplus if any to the said , and of this execution make due return.

Given under my hand and seal this day of 18 .
 S. M. J. P. [SEAL.]

WARRANT FOR AN ASSAULT.

State of Indiana, *county, sct:*
 To any constable of said county, GREETING:
 Whereas complaint has been made before me, one of the justices of the peace in the county aforesaid, upon the oath of , that of the aforesaid county, did on the day of , violently assault and beat, him the said , at in the county aforesaid, these are therefore to command you to take the said , if he be found in your county, and him safely keep, so that you have his body forthwith before me or some other justice of the peace for said county, to answer unto the said complaint, and further to be dealt with according to law.

Given under my hand and seal, this day of 18 .
 S. M. J. P. [SEAL.]

FORM OF A RECOGNIZANCE.

State of Indiana, *county, sct:*
 Be it remembered that on the day of in the year A. B. and C. D. personally appeared before me,

one of the justices of the peace for said county, and severally acknowledged themselves to owe to the state of Indiana, each, to be levied on their respective goods and chattels, lands and tenements, if default be made in the condition following, to wit: The condition of this recognizance is such, that if the above bound A. B. shall personally appear at the next circuit court to be holden for the said county, on the first day of the term, then and there to answer, (*here state the offence*) and abide the judgment of the court, and not depart without leave, then this recognizance to be void and of no effect, otherwise to remain in full force and virtue in law; (or if the recognizance be to compel the attendance of witnesses on behalf of the state, the condition should run thus:) The condition of this recognizance is such, that if the aforesaid A. B. shall personally appear at the next circuit court to be holden in and for said county, on the first day of the term, to give testimony on behalf of the state, and the truth to say on such matters as shall be then and there required of him or her, and not depart thence without leave of the court, then &c.

Taken and acknowledged at in the year 18 .

FORM OF A SEARCH WARRANT.

State of Indiana, county, sc: :

To any constable of the county aforesaid, GREETING.

Whereas it appears to me , one of the justices of the peace for the county aforesaid, that the following goods and chattels, (*here describe the goods, property or articles*) have, within days last past, by some person or persons unknown, been feloniously taken and carried away out of the hands, or from the premises of of the county aforesaid, and that the said doth on oath (or affirmation as the case may be,) declare that he verily believes that the said goods or a part therof, are concealed in the (*here describe the place to be searched*) in said county; these are therefore in the name of the state of Indiana, to authorize you, with the necessary and proper assistance, to enter in the day time into, (*here describe the place aforesaid*), and there diligently to search for the said goods and chattels, and if the same or any part thereof be found upon such search, that you bring the goods so found, as also the body of the said , forthwith before me or some other justice of the peace for said county, to be disposed of and dealt with according to law.

Given under my hand and seal, this day of 18 .
S. M. J. P. [SEAL.]

FORM OF A WARRANT FOR THE PEACE, OR GOOD BEHAVIOUR.

State of Indiana, county, sc: :

To any constable of the county aforesaid, GREETING:

Whereas hath this day made oath before me, a justice of the peace for the county aforesaid, that he hath been threatened by of the county aforesaid, and verily believes that said will destroy his property, or do some bodily injury to himself or family, (as the case may be,) whereupon he hath prayed surety of the peace; these are therefore to command you to apprehend the said , and bring him forthwith before me, or some other justice of the peace for said county, to find surety for his personal appearance, at the next circuit court to be holden for the said county, and in the meantime to keep the peace especially towards the said

Given under my hand and seal, this day of 18 .
S. M. J. P. [SEAL.]

FORM OF A MITTINUS.

State of Indiana, county, sc: :

A. B. a justice of the peace in and for said county, to the keeper of the jail of said county, GREETING:

Whereas C. D. on the day of in the year personally appeared before me, and made oath, that E. F. on the day of in the year , at the county of in the state of Indiana, did (*here insert the charge fully as sworn to*), and whereas also the said E. F. hath been arrested on the above charge and brought before me, and after mature deliberation, and a proper hearing thereof, hath been by me adjudged guilty: Therefore in behalf of the said state of Indiana, I command you, that you receive the said E. F. into your custody, in the proper jail of the said county, there to remain until he shall be delivered from your custody, by due course of law.

Given under my hand and seal, this day of 18 .
A. B. J. P. [SEAL.]

FORM OF AN AFFIDAVIT ON WHICH TO ISSUE A STATE WARRANT.

State of Indiana, county, sc: :

Before me, A. B. one of the justices of the peace for the county aforesaid, personally came C. D. who being duly sworn according to law, deposeth and saith, that on the day of at (*here describe the crime or offence*), was perpetrated on the body or goods, (as the case may be,) of E. F. of by a certain G. H. late of ; and that he verily believes, that a certain G. H. is guilty of the fact, or that he has been aiding or assisting in the commission thereof, further this deponent saith not. C. D.

Sworn and subscribed to before me, A. B. J. P. [SEAL.]

FORM OF A WRIT OF ATTACHMENT.

State of Indiana, county, township, sc: :

To any constable, GREETING:

Whereas A. B. hath this day made oath, that C. D. ab-

sconds to the injury of his creditors, as he verily believes, you are therefore hereby commanded to attach the goods and chattels, rights and credits, monies and effects, of the said C. D. which may be found in your township, agreeably to law; and whereas A. B. hath made oath that he does verily believe, that E. F. is indebted to, (or has property, as the case may be,) of the said C. D. you are therefore commanded to summons the said E. F. agreeably to law, that he appear before me, a justice of the peace within said township, on the day of 18 , then and there to answer under oath, touching the credits or property of C. D. within his or her knowledge or possession: hereof fail not, and of this writ make due return according to law.

Given under my hand and seal, this day of 18

S. M. J. P. [SEAL.]

Oath to be administered previous to issuing warrant for distress.

I, S. L. (or X. L. lawful agent of S. L.) do solemnly swear or affirm, (as the case may be,) that A. T. is justly indebted to me, (or S. L. as the case may be,) in the sum of dollars, for years rent, (*here describe the premises,*) situated in township, in county, on the day of in the year , and that I have reason to believe there will be danger of losing said debt, or rent thus due, by proceeding to collect the same in the usual way of collecting debts.

WARRANT OF DISTRESS FOR RENT.

State of Indiana, county, set:

To A. B. constable of township, of the county aforesaid, GREETING:

You are hereby authorized and required to distrain the goods and chattels in the dwelling house, (or in and upon the farm, lands and premises as the case may be,) of B. C. situated at , in the township of and county aforesaid, for dollars, being years rent, (or part of years rent, as the case may be,) due the day of in the year , to S. L. for the same, and proceed thereon for the recovery of the said rent as the law directs.

Given under my hand and seal at , this day of in the year 18 .

Z. Y. J. P. [SEAL.]

CHAPTER LVIII.

An Act declaring what Laws shall be in force.

[APPROVED, JANUARY 2, 1818.]

Be it enacted by the General Assembly of the state of Indiana,
That the common law of England, all statutes or acts of the

British parliament made in aid of the common law, prior to the fourth year of the reign of King James the first, excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter, thirteenth Elizabeth, and ninth chapter, thirty-seventh Henry eighth, and which are of a general nature, not local to that kingdom, and not inconsistent with the laws of this state; and also, the several Laws in force in this state shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority.

The common
law of Eng-
land, &c. in
force.

CHAPTER LIX.

An Act to provide for carrying the Laws into effect in new Counties.

[APPROVED, JANUARY 2, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That whenever any act passed at the present or any succeeding session of the general assembly of this state, erecting any new county, shall take effect, it shall be the duty of the governor, or person exercising the power of governor, to issue a writ of election, directed to some person in such new county, whom he shall appoint to act as sheriff until the next general election, and until a sheriff is chosen and qualified, requiring him to cause an election to be held at such place or places in said county as he may direct, on such day as may be designated in the writ of election, for the purpose of electing two associate judges of the circuit court, one clerk of the circuit court, one recorder and three commissioners of the county.

The governor
shall appoint
a sheriff,
whose duty it
shall be to
hold an elec-
tion for cer-
tain county
officers.

SEC. 2. The person to whom such writ of election is directed, shall have full power, and is hereby required to appoint the necessary officers of such election, which officers so appointed, shall act under the same rules, and be subject to the same penalties as are or may be provided by law for regulating general elections, or the election of such officers in old counties, and shall make return to the person acting as sheriff the Wednesday following, at such place in the county as he may have directed.

The sheriff
shall appoint
officers of elec-
tion.
When said of-
ficers shall
make return
thereof.

SEC. 3. The person to whom the writ of election is directed in a new county, shall give at least ten days notice of the time and place or places where such election is to be held, and also of the place where the return is to be made to him, by setting up written notices thereof in three of the most public places in each election district he may establish in such county; and on the return of the election being made to him, and the votes being compared according to

How, when, &
where notice
is to be given.

Certificates of law; he shall give to each of the commissioners a certificate of his election, and the time he is elected to serve, having due regard to the law; and shall also, within ten days thereafter, forward to the office of the secretary of state, a certificate of the persons elected as associate judges, and clerk of the circuit court, and recorder of the county; which persons shall be commissioned and qualified into office in all respects as is provided by the laws and constitution of this state: *Provided however,* The person acting as sheriff shall be fully authorized to administer such oaths as are required by the constitution and laws of this state, certified copies of which he shall file in the office of the clerk of the circuit court, whenever it shall be established.

Sheriff authorized to administer oaths

Officers to continue in the performance of their duties.

Civil and fiscal proceedings in no way affected by the erection of a new county.

SEC. 4. All officers falling within the bounds of a new county, shall continue to exercise the duties of their several offices until they are succeeded by others legally qualified to take their places.

SEC. 5. No suit or action of any nature whatsoever, commenced in any court of record, or before any justice of the peace, shall in any wise be affected by the laying off of any county; and all taxes that may be due the state or any county in the state, at the time of organizing any new county, shall be collected in the same manner as if such county had not been organized.

SEC. 6. This act to take effect and be in force from and after its passage.

CHAPTER LX.

An Act for the incorporation of County Libraries.

[APPROVED, JANUARY 28, 1824.]

Citizens may incorporate a county library.

Where to assemble
Choose a chairman.
Elect a president.
His term of service.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That whenever the citizens of any county shall be desirous of incorporating a county library, it shall be lawful for the qualified voters of such county, twenty days previous notice having been given, by putting up at least one manuscript advertisement in each township of such county, one of which shall be at the place where courts are holden, to assemble themselves at the court house, or place where courts are usually holden, and when so assembled, and having chosen a chairman and secretary, to proceed to elect a president and seven trustees, for the county library of such county, to serve for the term of three years, from and after the first Monday of September next ensuing their election, and until their successors shall be elected and qualified; and all elections for president and trustees of county libra-

vies, shall be held annually, on the first Monday of September, as their terms of office shall respectively expire.

SEC. 2. The president and trustees, chosen in manner aforesaid, together with the qualified voters of such county, are hereby created and declared a corporation and body politic, with perpetual succession, by the name and style of The President and Trustees of the county Library; and shall in their corporate capacity, be able and capable in law, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court of justice; and to make and use a common seal, and the same to change and alter at pleasure; and when any vacancy shall happen by the death, resignation, or removal of the president or any of the trustees as aforesaid, the remaining trustees shall appoint another person or other persons to fill such vacancy or vacancies.

Fill vacancies

SEC. 3. The president and trustees elected in manner aforesaid, and their successors in office, shall severally take an oath or affirmation, before some person authorized to administer the same, for the faithful performance of the duties of their office, before he or they shall be authorized to enter upon the duties thereof.

Shall take an oath or affirmation.

SEC. 4. The president and trustees qualified in manner aforesaid, shall elect by ballot a librarian and treasurer, and such other subordinate officers, as they may think necessary, and shall have power from time to time, and at all times thereafter, to make such by-laws, ordinances, and regulations in writing, not inconsistent with the constitution and laws of this state, and of the United States, as may be necessary for the government of the institution. The treasurer shall give bond with such security as the president and trustees shall direct.

Shall elect a librarian and treasurer.

Make by-laws

Treasurer shall give bond.

SEC. 5. The agent of any county, in which there may be an incorporation as aforesaid, shall on the presentment of an order, signed by the president and attested by the clerk thereof, forthwith pay to the treasurer of the same, all monies in his hands, due said library; and on failure thereof, said treasurer shall proceed against such delinquent agent, by motion in the circuit court, having given ten days previous notice thereof, and the court aforesaid, shall give judgment against said agent and his securities, for such sum as may be found due to said county library, together with interest and costs; and execution without stay thereon, shall be awarded.

Agent shall pay all monies on order of the president.

On failure, may be proceeded against

SEC. 6. In case of the absence of the president at any meeting of the trustees aforesaid, the said trustees shall have power to elect one of their own body, to serve as president pro tempore, until the president shall attend, provided that not less than a majority of the trustees elected

Trustees may elect a president pro tem.

or appointed as aforesaid, shall form a quorum to transact business.

May demand all monies paid into their treasury Appropriate the same as they may think proper.

SEC. 7. The president and trustees of the county libraries as aforesaid, are hereby authorized to demand and receive, upon their order, all monies that may be paid into the treasury of their corporation, for the benefit of a county library for such county, and lay out the same in the purchase of books, maps, &c., and such other property real and personal, as they may think most conducive to the advancement and benefit of such corporation, subject to such regulations as the general assembly may at any time establish: *Provided however,* That the said corporation, shall not in their corporate capacity, at any time hold more than the value of one thousand dollars, in real and personal property, books excepted.

Proviso.

Gen'l assembly may alter or amend this act.

Ten per cent. of the sales of lots appropriated.

SEC. 8. The general assembly, shall as often as to them it may appear necessary and advisable, alter or amend this act, or any of the by-laws of such corporations.

Power and duty of county agent.

Further duty of the agent.

SEC. 9. Ten per cent. of the proceeds of the sale of town lots at the seat of justice, of every county hereafter laid off, shall be reserved for the use of a public library for such county, to be collected and paid over as provided for in this act; and for the purpose of more effectually securing the ten per centum arising from the sales of town lots at each county seat, established by the laws of this state, the county agents of such counties severally, shall not be subject to obey any order, made by the different boards of county commissioners, which would authorize the said agents to receive any thing but specie or its equivalent, for the ten per centum reserved by law, on the amount of the sales of lots at such county seats, for the use of county libraries. And in all cases where any county agent may have heretofore, in obedience to the orders of the board of county commissioners of his proper county, taken and received county orders, in payment of debts due for town lots, in any county seat established as aforesaid, it shall and may be lawful for such agent to apportion the amount of the ten per centum, due such county library, (and received in county orders as aforesaid) on all the debts still due such county, for town lots, according to the sums each individual may be owing; and until such agent may have a reasonable time to collect such sum due, no action shall lie against him, by the board of county trustees of the county library of his county, for failing to pay such library fund.

CHAPTER LXI.

An Act for the incorporation of Public Libraries.

[APPROVED, DECEMBER 17, 1816.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That from and after the first day of March next, the inhabitants of any city, town, village or neighbourhood in this state, or any part of them, whenever they have subscribed the sum of one hundred dollars for a public library, may assemble themselves for the purpose of holding an election.

SEC. 2. And if two thirds of the subscribers are present, they may proceed to choose by voice, a chairman, who shall preside at that meeting, and the clerk, who shall keep a record of the same.

SEC. 3. After a chairman and clerk are chosen, the shareholders may proceed to choose by ballot seven directors, and to agree upon a name by which their library shall be known; the directors shall appoint one of their number to be president at their meetings, who shall have no other than a casting vote.

SEC. 4. A true statement of the proceedings of such meeting, including the amount subscribed, and the number of subscribers present at the meeting, shall be sworn to, or affirmed to before some justice of the peace of the county, by the chairman or the clerk, provided for by the second section of this act; and it shall be the duty of such justice, to certify on such statement, that it was sworn to or affirmed to before him.

SEC. 5. It shall be the duty of the recorder of the county, to record the said statement in his book of record when required.

SEC. 6. After such statement of proceedings is duly recorded according to this act, the president and directors, and their successors forever, shall be a body corporate and politic, to be known by such name as is registered in the recorder's office. They shall be capable in law and equity to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court or courts, or before any judge or judges, justice or justices, or person or persons whatsoever, in all manner of suits, actions, plaints, pleas, causes and demands whatever, in as effectual a manner as any other person or persons, body or bodies corporate or politic may or can do: *Provided however,* that nothing in this act contained, shall be so construed as to authorize any library company incorporated in this state, to issue notes or bills of credit, payable to any person or persons on his or their order, or to bearer; nor to deal in any kind of bills of exchange, notes or due bills whatever. Except the first election of directors, the annual election forever thereafter,

Public libraries may be established, and how.

Shareholders may choose 7 directors.

Chairman or clerk shall swear to the statement of their proceedings.

May be incorporated.

Shall not issue notes or bills of credit.

Marriages.

shall be held on the first Monday in January; but if any annual election should be omitted, the directors shall remain in power until the next annual election, and until successors shall be chosen.

May make by-laws.

SEC. 7. Such library or libraries, shall be governed and regulated by such by-laws as may from time to time be made by the president and directors of the same, not inconsistent with the constitution and laws of this state; who shall have power to alter, amend, abolish, and renew any such by-law or by-laws at pleasure.

Further power of the president and directors.

SEC. 8. The president and directors shall have power to make a common seal, and the same to alter, break, change, or renew at pleasure. They shall have power to levy a tax on the shareholders, provided such tax does not exceed one dollar on each share, in any one year; nothing however, in this act, shall be so construed as to prevent a majority of two thirds of the shareholders, attending at their annual meeting, from increasing such tax to any sum not exceeding five dollars on each share in any one year. They shall have power to appoint a treasurer and librarian, and the same to remove at pleasure.

May receive donations.

SEC. 9. A majority of the directors shall be necessary to form a quorum. They shall have power to fill vacancies that may happen in their own body, and the director or directors, by them elected, shall serve until the next annual election thereafter, and until others are elected in their stead.

Not to affect county libraries.

SEC. 10. They shall have power to receive by donation, any books, monies, papers, or lands, or any other thing or things: *Provided* such donation, or the rent or interest thereof, be applied to no other purpose than the true interest of the library on which it was bestowed, according to the true intent and meaning of this act: *Provided however*, that they shall not keep for a longer time than six months after receiving the same, more than the real value of five hundred dollars in land, or any other property, except books and those things appertaining to a library.

SEC. 11. This act shall not in any way or manner be so construed, as to affect any county library provided for in the constitution of this state.

CHAPTER LXII.**An Act to regulate Marriages.**

[APPROVED, JANUARY 30, 1824.]

Who are marriageable.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That male persons of the age of fourteen years, and female persons of the age of twelve years, and not prohibited by the laws of God, may be joined in marriage.

Marriages.

SEC. 2. Ministers of the gospel, regularly licensed to preach, as long as they continue to be members and preachers of their respective churches, justices* of the peace, in their respective counties, judges of any of the courts, within their respective jurisdictions, and the society of Friends, commonly called Quakers, in their public meetings, according to the rules of their society, are hereby authorized to join together as husband and wife, all who may apply to them, according to the rules hereinafter prescribed.

Clerk of circuit court to issue license & keep a record thereof.

SEC. 3. Previously to persons being joined in marriage, they shall produce a license from the clerk of the circuit court, of the county where one or more of the parties usually reside, directed to any person empowered by law to solemnize marriages, authorizing him to join together the persons therein named, as husband and wife: *Provided however*, That the society of friends as aforesaid, are hereby authorized to solemnize marriages, in their public meetings without the production of such license; and every clerk shall keep a record of marriage licenses issued by him, in a book to be used for that purpose.

When consent of parents, &c. necessary to obtain license.

SEC. 4. Male minors under the age of twenty one years, and female minors under the age of eighteen years, shall not be joined in marriage without the consent of their parents or guardians, if such parents or guardians live within this state; and if any clerk of the circuit court shall grant a license to such minor, without the consent of his or her parents or guardians (if he or she have any living in this state) either verbally given, or in writing attested by a credible witness, who shall make oath before such clerk, that he heard such parents or guardians give their consent to such marriage, and saw them subscribe their names to such instruments of writing, purporting to be their written consent, he shall for every such offence, be subject to pay to such parents or guardians, the sum of five hundred dollars, with costs of suit, to be recovered by an action of debt, before any court having jurisdiction thereof; and any indemnifying bond given to any clerk, to keep him secure from damages, for granting a marriage license, shall be null and void.

Penalty for granting license without such consent.

SEC. 5. If any clerk shall grant a marriage license to any persons, except one of the parties usually reside in his county, he shall be fined in any sum not exceeding five hundred dollars, together with costs of suit, to be recovered in any court having jurisdiction thereof, by presentment or indictment.

Penalty for granting license to non-residents.

***SEC. 2.** *Be it further enacted*, That all marriages, which heretofore have been solemnized by any justice of the peace, out of the township for which he was or may be commissioned, provided they were within the county in which such justice resided, at the time of the solemnization thereof, are hereby declared legal to all intents and purposes, and the issue thereof fully and completely legitimate. [Special Acts, page 14.]

Certificate of
marriage,
when & where
to be filed.

Proceedings,
when the cl^k
doubts the age
of the parties.

Penalty for vi-
olating the
provisions of
this act.

Penalty on
those solemniz-
ing marria-
ges, who are
not authorized

Marriages
heretofore so-
lemnized de-
clared lawful.

SEC. 6. Every person who shall solemnize a marriage, by virtue of this act, shall within three months thereafter, file a certificate thereof, in the clerk's office of the county where such marriage took place, to be recorded by such clerk, in a book to be kept for that purpose, which record shall be an evidence of such marriage.

SEC. 7. In all cases where the clerk is unacquainted with either of the parties, or doubts of their being of lawful age, or whether either of them lives in the county, the affidavit of any credible person, subscribed and sworn to before such clerk, which oath he is authorized to administer, setting forth, that the person making such affidavit, is acquainted with the parties, and that one of them does usually reside in the county, and that he does verily believe they are of lawful age, and that he knows of no lawful reason, why they should not be married, shall be sufficient acquittal to him, for granting such license.

SEC. 8. If any person contrary to the provisions of this act, knowingly solemnizes a marriage, such person shall on conviction thereof before the circuit court, by presentment or indictment, be rendered incapable of solemnizing marriages thereafter, and moreover be liable to pay the costs of suit. And if any person having solemnized a marriage, shall fail or neglect to file a certificate thereof, as before directed, he shall be subject to pay five dollars, for every month he shall continue to fail or neglect to file such certificate, to be collected by presentment or indictment, before any court having jurisdiction thereof, with cost of suit.

SEC. 9. If any person not authorized by the provisions of this act, shall solemnize, or attempt to solemnize marriages, he shall on conviction thereof before the circuit court, be deemed guilty of usurpation, and be punished accordingly.

SEC. 10. All marriages heretofore solemnized by licensed preachers of the Gospel, and judges of the circuit court, are hereby declared lawful, and the issue or issues thereof, are hereby legitimatized as fully and completely, as though the said marriages were in the first instance legal.

CHAPTER LXIII.

A Joint Resolution of the General Assembly relative to the State and District Medical Societies.

[APPROVED, JANUARY 30, 1824.]

Preamble.

Whereas by an act of the general assembly of the state of Indiana, the law regulating the practice of physic and surgery was repealed, and whereas there are funds in the hands

of the treasurers of the several districts, and of the treasurer of the state medical society,—Therefore,

Resolved by the General Assembly of the state of Indiana,

That the state medical society, and the societies of the several districts, be authorized to settle and close their business, in the same way, as if the aforesaid repealing act had never taken place.

Societies au-
thorized to
close their bu-
siness.

CHAPTER LXIV.

An Act for the appointment of Trustees to receive Deeds for Lots or Lands, given or purchased for the use of Schools, Meeting Houses or Masonic Lodges.

[APPROVED, JANUARY 7, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That whenever any congregation, religious society or church, shall be desirous of receiving by gift, grant, donation or purchase, any lots or lands, not exceeding in quantity five acres, for the purpose of erecting thereon, any school or meeting house, it shall be lawful for such congregation or society, or a majority of them, to meet at some public place, in the neighbourhood of such church, society or congregation, after having given ten days notice thereof, and then and there proceed to the election of not less than three, nor more than five trustees, a majority of whom

Elect trustees.

shall be capable of receiving a deed or deeds, for such lots or lands so acquired by gift, grant or purchase, for the use of such church, society or congregation, who shall continue in office for one year after their said election, and until their successors are elected by said society, church or congregation;

Term of ser-
vice.

and the person who acts as clerk of such election for trustees, shall within ten days after said election for trustees, deposit in the recorder's office of the county, where such lots or lands lie, a certificate of the election of said trustees, which shall be recorded by the recorder of said county; and the lands so deeded by gift, grant, donation or otherwise to the trustees as aforesaid, shall vest in them and their successors in office, for the entire use, benefit and advantage of such society, church or congregation forever, all the right and title to such lots or lands so deeded as aforesaid; and when any lot or lots of ground as aforesaid, shall be within the bounds of any incorporated town, it shall not be lawful for such church or society to permit any grave yard thereon.

Grave-yard
not permitted,
&c.

SEC. 2. That whenever any church, society or congregation shall be desirous of selling or disposing of any lots or

Trustees may sell.

lands, so by them held for the purposes aforesaid, it shall be lawful for the trustees appointed in pursuance of this act, to sell and convey the same, for the purpose of erecting or repairing, any school or meeting house, on the residue of such lands, which may be held by them, for the purposes aforesaid.

Further power of trustees.

SEC. 3. That the trustees appointed or elected in pursuance of this act, shall have, exercise and possess, all necessary powers to enable them to purchase or convey any lots or lands, for and on behalf of their respective societies, churches or congregations, for the exclusive benefit and interest of the same, within the true intent and meaning of this act: *Provided however,* That this act shall not be so construed as to affect any donations heretofore given, but such donation shall be conveyed agreeably to the intention of the original donors, under the provisions of this act.

Grand Lodge.

SEC. 4. That the rights, privileges, benefits and immunities hereby given, granted and extended to congregations and religious societies, are hereby given, granted and extended to the Grand Lodge of Indiana, and to the lodges which now are, or hereafter may be subordinate to said Grand Lodge.

May hold one acre.

SEC. 5. The said Grand Lodge of Indiana, by the name and style, of the Grand Master, Deputy Grand Master and Wardens of the Grand Lodge of Indiana, and the lodges which now are, or hereafter may be subordinate to the said Grand Lodge, by the name and style of the Master and Wardens of Lodge No. —, taking to themselves such name and number as have been, or may be assigned them, by the said Grand Lodge of Indiana, shall be able and capable in law to purchase, have, hold, receive, enjoy and retain to themselves in perpetuity, or for any term of years, any lands, tenements, or hereditaments of what kind or nature soever, not exceeding in real estate one acre of ground, together with the improvements thereon, and of personal estate, not exceeding the sum of five thousand dollars; and to sell, alien or lease the same, as they or each of them may think proper.

Similar powers extended to Chapters of Royal Arch masons.

SEC. 6. The same powers, rights, privileges and immunities, which are by this act conferred on, and extended to the said subordinate lodges, are hereby extended to, and conferred on each and every Chapter of Royal Arch Masons, now established in this state, or which may hereafter be established according to the principles of Royal Arch Masonry.

Donations made previous to this law, governed by the same rules.

SEC. 7. Any religious society, the inhabitants of any school district, or any congregation whatever, that previous to the passage of this act, may have received any lot or lots, or tract of land, not exceeding five acres, by donation or purchase, for the purpose of erecting on the same, a house

of religious worship, a school house, or other building appropriated to such congregation, and may be desirous of holding the same in perpetuity, by trustees, as prescribed in this act, are hereby authorized and empowered so to do, on having first obtained the consent thereto, of at least two thirds of the persons interested in such lot or lots, or tract of land, and elected trustees, and caused the certificate of their election to be recorded in the recorder's office of the proper county, agreeably to the provisions of the first section of this act; upon which the fee simple of such lot or lots, or tract of land, shall be vested in the said trustees, elected as aforesaid, and their successors in office, as fully in every respect, as if the title had been made to them in trust in the first instance; and said trustees of such religious society, school district or congregation, shall have the same rights and privileges in and over such lot or lots, or tract of land by them so held, and be subject to all and any of the provisions of this act, relative to trustees in other cases; any law, usage or custom to the contrary notwithstanding.

CHAPTER LXV.

An Act regulating Grist Mills and Millers.

[APPROVED, JANUARY 22, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That every miller, or the owner or occupier of every water, horse or wind grist mill now erected, or which shall hereafter be erected and built, shall be entitled to have and receive, out of the grain which shall be ground in his, her, or their said mills, the following rates of toll, in full Rates of toll, compensation therefor, to wit: For grinding and bolting wheat or rye into flour, one eighth part thereof; for grinding Indian corn, oats, barley, or buckwheat, one eighth part thereof; for grinding malt, and chopping rye, one eighth part thereof; and steam mills, when they grind for toll, the same rates.

SEC. 2. The owner or occupier of every grist mill of the aforesaid description, shall be accountable to the owners of Accountability of the owner, grain received to grind, for the safe-keeping of the same, whilst in his, her, or their mills; and if any grain, bag, or cask containing the same, shall be lost or destroyed, whilst entrusted to the care of any miller, for the purpose of being ground, the owner or occupier, (as the case may be,) shall make good the same, to the owner thereof; but in order to entitle any owner of grain, so deposited and lost, or destroy-

Owner of
grain shall
cause the bags
&c to be
marked.

ed, to recover the value thereof, against the owner or occupier of any of the aforesad mills, the owner of the grain shall cause the bags or casks containing the same, to be distinctly marked, with the initial letters of his, her, or their name or names; but nothing in this section shall be so construed, as to charge any owner or occupier of any mill, with the loss of grain, bags, or casks, that shall happen by fire, or other unavoidable accident, without the fault or neglect of such miller, owner, or occupier thereof.

Where water
is backed,
owner may
erect fortifica-
tions, &c.

SEC. 3. It shall be lawful for any person, who shall be the owner of a grist mill, saw mill, or other water works, and who shall have a dam across any water course, for such owner, as far as the water is caused by said dam, to be backed up said stream, and where the water has, or is about to wash a channel, so as to turn said stream out of the bed thereof, to erect such fortifications, as he may think proper, to prevent the water from cutting or washing a channel, without the banks of such stream.

Shall grind in
turn.

SEC. 4. All millers, when the owners or occupiers grind for toll, shall well and sufficiently grind the grain brought to their mills, in due time, and in turn as it is brought; and may take for toll, such part as is herein before directed; and every miller failing to grind as aforesaid, as the same shall come in turn, or who shall take or exact, more than legal toll, shall for every such offence, forfeit and pay to the person injured, the sum of two dollars and fifty cents, recoverable before any justice of the peace, within the township where the offence shall have been committed.

Rates of
charge for
manufactur-
ing, &c.

SEC. 5. That hereafter, no miller shall charge for manufacturing and packing flour, exceeding fifty cents per barrel, nor shall he retain any of the residue of the grain left, after the manufacturing process, by virtue of any pretended custom, law, or usage whatsoever; and hereafter it shall be the duty of the owners or occupiers of any grist mill as aforesaid, to receive and carry, in and out of such mills, load and unload, all grain brought to their respective mills, when demanded by the owner or carrier of such grain; and on failure thereof, shall be fined three dollars, on the complaint of the owner of the grain, before any justice of the peace of the proper township.

Owner to re-
ceive, load, &
unload.

CHAPTER LXVI.

An Act establishing the office and defining the duties of Notary Public.
[APPROVED, JANUARY 26, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the governor shall appoint and commission,

as many notaries public in this state, as he may deem necessary, who shall hold their offices for the term of five years Term, 5 years, if they shall so long behave well.

SEC. 2. Each notary public, so soon as he shall receive his commission, shall repair to the clerk of the circuit court of his proper county, and shall take the oaths prescribed by Oath, the constitution, and by law, and faithfully and impartially to discharge the duties of his office; a certificate of which oaths shall be endorsed on the back of his commission, by said clerk.

SEC. 3. Each notary public shall procure a seal, which Seal shall be called, The seal of the Notary Public; he shall when required, make all necessary attestations and protestations; for each of which, with his certificate and seal annexed, he shall be entitled to demand and receive of the person applying therefor, the sum of one dollar.

SEC. 4. Each notary public, shall and may take and certify the acknowledgment of powers of attorney, mortgages, deeds, and other instruments of writing, with or without the release and assignment of dower, as fully in every respect, as any judge or justice may or can now do; for which he shall receive, the compensation allowed by law to justices of the peace, for the like service. Take ac-
knowledg-
ments, &c.

SEC. 5. Each notary public shall, and he is hereby authorized, to demand and receive for recording, if thereunto required, in a book to be kept for that purpose, seventy-five Fees, cents for every attestation, protestation, or other instrument of publication, under his proper seal, relative to foreign bills of exchange, and for recording as aforesaid, relative to inland bills of exchange, twenty-five cents.

SEC. 6. It shall be the duty of the governor, to take bond Bond, with sufficient security, from each notary public, before he enters on the duties of his office, in the sum of five hundred dollars, conditioned for the due performance of the duties thereof; which bond if forfeited, shall be sued for in the name of the state, and for its use.

CHAPTER LXVII.

An Act for the relief of Occupying Claimants of Land.

[APPROVED, JANUARY 28, 1818.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That in all cases where any occupying claimant, being in quiet possession of any land, for which such person can shew a plain and connected title in law or equity, de-

Occupying Claimants.

When occupying claimant shall be paid for valuable improvements.

rived from the records of some public office, or being in quiet possession of, and holding the same by deed, devise, descent, contract, bond, or agreement from and under any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded, or being in quiet possession of, and holding the same under sale for taxes, or under sale on execution against any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded, if any person or persons shall set up and prove an adverse and better title to said lands, such occupying claimant holding as aforesaid, shall not be evicted or turned out of possession, until he or she shall be fully paid the value of all lasting and valuable improvements made on said lands by such occupying claimant, or by the person or persons under whom he or she may hold the same, previous to receiving actual notice by the commencement of suit on such adverse claim, by such eviction, unless such occupying claimant shall refuse to pay the person so setting up and proving an adverse and better title, the value of the land without improvement made theron as aforesaid, upon the demand of such successful claimant as hereinafter provided.

SEC. 2. The court rendering judgment in any such case against such occupying claimant, shall, at the request of either party, appoint three judicious disinterested freeholders, of the county where such judgment may be rendered, who shall within twenty days after receiving an order, to be made out by the clerk, under the seal of the said court for that purpose, assess on oath or affirmation, the value of all lasting and valuable improvements made as aforesaid, on the land in question, previous to receiving actual notice as aforesaid, of such adverse claim; and in assessing the value of such improvements, the commissioners shall take into consideration all the damages which the land in question may have sustained by waste or cultivation, and deduct the same from the estimated value of such improvements; and the said commissioners shall also assess the value of the land in question, at the time of rendering judgment as aforesaid, without the improvements made thereon, or damages sustained by waste or cultivation as aforesaid; which assessment or valuation shall be signed and sealed by such commissioners or a majority of them, and deposited with the clerk of the court by whom they were appointed, before the next term thereof; and if either party shall think himself or herself aggrieved by such assessment or valuation, the court may, upon the application of such person at the next term, for good cause shewn, order a new assessment or valuation, and appoint other commissioners as hereinbefore directed, who shall proceed in the same manner as herein before directed.

The value of improvements how, and by whom estimated.

Persons aggrieved, how redressed.

Officers' Heirs Relief of.

Sec. 3. The successful claimant in all such cases, may at his election, either demand of the occupying claimant, the value of the land without the improvements so as aforesaid assessed, and convey the land in question to such occupying claimant, or pay the occupying claimant the value of the improvements so as aforesaid assessed, within such reasonable time as the court shall allow; and if such successful claimant shall pay the occupying claimant the value of the improvements so as aforesaid assessed, within the time allowed by the court, or, if on demand of the value of the land without the improvements, and tender of a deed of the land in question as aforesaid, by the successful claimant, if the occupying claimant shall refuse or neglect to pay the successful claimant the value of the land without the improvements so as aforesaid assessed, within such reasonable time as the court shall allow, then a writ of possession shall be issued in favour of the successful claimant; but if such successful claimant shall not demand the value of the land in question, without the improvements and tender a deed as aforesaid, and shall refuse to pay the occupying claimant the value of improvements, so as aforesaid assessed, within such reasonable time as the court shall allow, such occupying claimant shall not be evicted from such land, but shall be suffered to remain in possession; and in no such case shall the occupying claimant who may be evicted, be liable to any action or prosecution for or on account of any rents or profits accruing, or waste or damages done to said land previous to receiving actual notice as aforesaid, of such adverse claim, unless such waste or damages shall exceed the value of the improvements so as aforesaid to be assessed, and then only the amount of such excess.

The successful claimant may sell the land, or pay the value of improvements to the occupying claimant.

Occupying claimant failing to pay the value of the land, ousted.

When occupying claimant may continue in possession.

CHAPTER LXVIII.

An Act for the relief of the Heirs of Civil Officers deceased.

[APPROVED, JANUARY 22, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the executors, administrators, or legal representatives of any civil officer, whose duty it shall be or may have been, to collect state or county taxes within this state, and who may have died, or shall hereafter die, without having completed said collection of the revenue, to collect the same in their representative capacity, in the same manner, that such deceased collector might, or could have done, in his life time; and in order to carry this act more fully into effect, the executor, administrator, or legal representative

Legal representative of collectors authorized to collect.

Officers' Security.

Proviso.

Bond.

Justices now
in commission
to give bond.Penalty for
refusal.

of such deceased collector, is hereby vested with all the power and authority, to enforce the payment of such arrears of taxes, as collectors of the revenue now are, or hereafter may be by law: *Provided however,* that the benefits of the foregoing provisions in this act, shall only extend to the executor, administrator, or legal representative of such deceased collector, as may have paid over, to the proper authority, all the taxes, for which he was accountable or liable, either for state, or county purposes.

SEC. 2. The executor, administrator, or legal representative of such deceased collector, as may be entitled to the benefits of this act, shall previous to his commencing such collection, enter into bond with security, to be approved of by the board of county commissioners, payable to the county treasurer, for the faithful discharge of his duty, as prescribed in this act, and that he will not illegally harass or oppress any person, who may appear to owe taxes on such deceased collector's books; which bond shall be deposited in the clerk's office of the proper county, and may be put in suit from time to time, as the case may require.

CHAPTER LXIX.

An Act requiring certain Public Officers to give security.

APPROVED, JANUARY 26, 1824.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That each justice of the peace now in commission, shall within sixty days after the taking effect of this act, give to the clerk of the circuit court of his county respectively, a bond in the sum of one thousand dollars, with good freehold security, to be approved of by the clerk, for the faithful discharge of his duty, and for paying over on demand, to the proper son authorized or entitled to receive the same, all monies that may come into his hands; which bond shall be made payable to the state of Indiana, for the benefit of any person concerned, and may be put in suit from time to time, in any court of competent jurisdiction, and shall not be void on the first recovery thereon; and on judgment obtained on such bond, there shall be no stay of execution. Any justice of the peace neglecting to comply with the foregoing provisions, shall on conviction of such refusal, by presentment or indictment in the circuit court of the proper county, be fined in any sum, not exceeding two thousand dollars, at the discretion of the jury who may try the cause.

SEC. 2. Each justice of the peace who shall hereafter be

Officers' Security.

commissioned in any county, shall previous to his entering upon the duties of his office, give bond and security as directed in the foregoing section, and should any person hereafter commissioned a justice of the peace as aforesaid, proceed to act under his commission, until he has complied with the provisions of this act, he shall be deemed guilty of usurpation, and liable to be prosecuted accordingly.

Justices here-
after com-
missioned, give
bond.For failure, li-
able to prose-
cution.Penalty for
swearing jus-
tice into of-
fice before he
shall have giv-
en bond.

SEC. 3. If any clerk of the circuit court, or other person authorized to administer oaths, shall hereafter swear into office any person commissioned as a justice of the peace, until he has complied with the provisions aforesaid, every person so offending, shall on conviction thereof, before any court of competent jurisdiction, be adjudged guilty of a misdemeanor in office, and fined in any sum not exceeding fifty dollars.

Proceedings
when securi-
ties remove or
become insuf-
ficient.

SEC. 4. That whenever the security or securities, of any of the clerks of the circuit courts, sheriffs, coroners or justices of the peace in any county, shall remove without the state, become insolvent or insufficient, it shall be the duty of the circuit courts, upon petition signed by three or more respectable citizens of the proper county, setting forth such removal, insolvency or insufficiency, to cause the officer whose security or securities may be so suspected, to appear before them and shew cause, if any he may have, why he should not give additional bond and security or securities, similar to the former bond executed by such officer, for the faithful performance of his duty as such.

Costs.

SEC. 5. If upon the hearing of the case, the court shall be of opinion, that such security or securities have not removed, or become insolvent, but are wholly sufficient, they shall dismiss the same, at the costs of the petitioners.

Costs.

SEC. 6. But if it shall be the opinion of said court, that such security or securities have removed without the state, become insolvent or insufficient to discharge the bond, which he or they may have executed as such security or securities, it shall be the duty of said court, to require of such officer, such other and further security or securities, as they may deem necessary; and the bond or bonds, so taken as contemplated by this act, shall be similar in every respect to the former bond, given or required to be given by such officer.

Further secu-
rity may be
required.

SEC. 7. That when the securities to any constable's bond shall die, remove, become insolvent or insufficient, and complaint of such fact shall be made to the board of county commissioners in writing, it shall be the duty of such board to issue a summons to such constable and securities, to shew cause if any they can, why other and better security should not be given; and upon the hearing of said complaint, and the facts set forth, proved to the satisfaction of said board,

Constables
may be requi-
red to give
better secu-
rity.

Partition of Real Estate.

such security shall be required; and upon such constable refusing to comply, he shall be dismissed by said board.

SEC. 8. That should any officer refuse to comply with the order of the circuit court, he shall be subject to attachment, and all the process of contempt of said court.

CHAPTER LXX.

An Act to provide for the Partition of Real Estate.

[APPROVED, JANUARY 2, 1824.]

Court may appoint three commissioners.

Their duties.

Court may order sale in certain cases.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That when two or more persons are proprietors of any tract or tracts, lot or lots of land, within this state, any of whom are desirous of having the same divided, it shall and may be lawful for the circuit court of the county where such land or lots may lie, on the application of either party, notice of such application having been previously given by the party so applying, for at least four weeks, in some public newspaper in this state, to appoint three disinterested freeholders, residents of said county, not related to either of the parties, as commissioners for dividing the said tract or lots of land; and such commissioners having previously taken an oath or affirmation, before some justice of the peace in said county, honestly and faithfully to execute the trust reposed in them as commissioners aforesaid, shall proceed to make division of the said lands, lots, tenements and hereditaments, as directed by the court, among the owners and proprietors thereof, according to their respective rights; which partition being made by the said commissioners, or any two of them, and return thereof being made in writing, under their hands and seals to the said court, particularly describing the lots or portions allowed to each respective owner or proprietor, mentioning which of the owner or owners, proprietor or proprietors are minors, if any such there be; which return being acknowledged by the commissioners making the same, before any one of the judges of the court aforesaid for the said county, and accepted by the court, and entered and recorded in the clerk's office, shall be a partition of such lands, lots and tenements therein mentioned.

SEC. 2. When any houses and lots are so circumstanced, that a division cannot be had, without great prejudice to the proprietors of the same, and the commissioners appointed to divide the same, shall so report to the circuit court; the said court shall thereupon give order to the said commissioners to sell such house and lot, or houses and lots at

Partition of Real Estate.

public vendue; and shall make and execute good and sufficient conveyances to the purchaser or purchasers thereof, which shall operate as an effectual bar, both in law and equity, against such owners or proprietors, and all persons claiming under them; and the monies arising therefrom, to pay to the owners or proprietors of such houses and lots, their guardians or legal representatives, as shall be directed in the said order.

SEC. 3. The said commissioners so appointed, shall be entitled to receive each one dollar per day, for their services rendered as aforesaid, together with such other sum or sums, as the court shall deem reasonable, for surveying, marking, chain carrying and platting; and judgment for the same and all costs, shall be rendered against the said owners and proprietors, in favour of the commissioners, on their motion, or of the officers concerned.

Compensa-
tion.

SEC. 4. The guardians of all minors, shall be and are hereby respectively authorized and empowered, on behalf of the respective minors, whose guardians they are, to do and perform any matter or thing respecting the division of any lands, tenements and hereditaments, as is herein directed, which shall be binding on such minor or minors, and be deemed as valid to every intent and purpose, as if the same had been done by such minor or minors, after he, she or they had arrived at full age.

Acts of guar-
dians binding
on minors.

SEC. 5. No division or sale shall be made by order of the said court as above directed, contrary to the intention of any testator, as expressed in his last will and testament.

No division
contrary to
the will of tes-
tator.

SEC. 6. When two or more persons are the joint owners of any real estate, lying in more than one county, it shall be lawful for the said persons, either by themselves if of lawful age, or by their guardians, if under age, to make application to the court of any one of said counties, under the provisions of this act, who are hereby authorized to make such order relative thereto, as they could have made, had the whole of such real estate been situated in the county where such application is made.

Estates lying
in more than
one county,
the court of
either may
appoint com-
missioners, &c.

SEC. 7. In all cases of partition of decedents' estates, agreeably to this act, it shall be the duty of said commissioners, if thereunto required by the widow, to assign and set over to her, her dower of and in the lands and tenements of the deceased, agreeably to an act for the assignment of dower, and prescribing the mode of proceeding therein, and to make due return of such proceedings, as directed by the first section of this act.

Commission-
ers may assign
dower.

SEC. 8. When the children of any person dying intestate, shall be entitled by inheritance from such person, to any lands and tenements, and one or more of such children shall have been advanced in the life time of such person, by a portion or settlement in lands or otherwise, the said com-

missioners shall con-
sider portions
advanced to
children in the

life time of the commissioners in making partition, shall take into consideration the value of such portion, at the time of its being advanced, and also the distributive shares of each child, in the personal estate of the deceased; and by their said division, shall make the estate of all the children to be equal, as near as can be estimated.

Review of partition may be granted.

Courts of equity same jurisdiction.

SEC. 9. Upon the return of any partition made as aforesaid, the court at the session to which the same is returned, may for good cause shewn, appoint new commissioners to review such partition, who shall in all respects be governed by the provisions of this act; and any person not a resident of the proper county, may within one year after such return, obtain a review as aforesaid; and any infant whose guardian shall not attend and approve such partition, any feme covert or lunatic, may within one year after the removal of his or her disability, have a review upon shewing cause as aforesaid.

SEC. 10. That the courts of equity, may and shall have concurrent jurisdiction, with courts of law, in all cases of partition, with the usual powers of courts of equity, to whom jurisdiction in partition, is given.

CHAPTER LXXI.

An Act to Perpetuate Testimony.

[APPROVED, JANUARY 26, 1824.]

In what cases testimony is to be perpetuated.

Mode of proceeding.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That whenever any person shall make affidavit before any circuit court, or judge thereof, or master in chancery, that such person is a party in a suit then pending, or expects to be made a party to any suit, and that the testimony of a witness to be named in such affidavit, is material and necessary in the prosecution or defence of such suit; the court or officer before whom such affidavit is made, shall order reasonable notice to be given, to the person named in such affidavit as party, or excepted to become party, or to his attorney; that on the day and at the place in such notice to be expressed, such witness will be examined *de bene esse*, before such judge or master in chancery, as shall be specified in such order.

SEC. 2. That upon proof that such notice has been given, either by personal service, or by advertisement at least three weeks successively in some newspaper printed and published in the proper county, or one most convenient thereto, (when the person to be notified is not an inhabitant of this state,) to be made to the officer authorized to take such tes-

timony, such officer on the day appointed in said order, or on such other day as such officer shall then appoint, proceed to take the testimony of such witness, and shall include in the deposition any answer or declaration of such witness, which shall be required by either of the parties; and such deposition being carefully read to, and subscribed by such witness, the officer taking the same, shall certify to have been taken pursuant to this act.

SEC. 3. That every affidavit and order, and the deposition so taken and certified, shall within thirty days after taking such deposition, be filed in the office of the clerk of the circuit court of the county, in which the same was taken, or where the suit is pending, or where the subject matter of such expected suit may be situate; and upon proof of the death, insanity, or absence from the state, of such witness, or his inability to attend court by reason of age or infirmity, such deposition or a certified copy thereof by the clerk of the court, with whom the same may have been filed, shall be read and admitted by any court in this state, in any cause between the parties named in such affidavit aforesaid, or in any cause between persons claiming under either of said parties, and shall have like effect, as if the said witness had been personally present, and given oral testimony therein, saving the right of exception in all cases, on account of the competency of such witness or of any part of his testimony contained in such deposition.

SEC. 4. That when any person shall make affidavit as aforesaid, that he expects to be party to a suit, and that the testimony of a witness, not resident within this state, is material and necessary to the prosecution or defence thereof, and shall file the same with the clerk of any circuit court, the said clerk shall make out a commission or authority directed to any officer authorized by law to take depositions in the state or territory, where such witness resides, authorizing such officer to take and certify the deposition of such witness, upon reasonable notice as aforesaid, and pursuant to the directions of the second section of this act; and such deposition so taken and certified as aforesaid, authenticated by the certificate of the clerk, and the seal of the court of the county or district, in which the officer taking such deposition resides, to be returned with the commission aforesaid; and proof by affidavit, of the service of notice of taking the same, to the court issuing such *dedimus*, shall be of like force and effect as aforesaid.

Testimony taken under this act when read

Testimony of non-resident witness, when taken.

CHAPTER LXXII.

An Act for the relief of the Poor.

[APPROVED, JANUARY 30, 1824.]

*Overseers of the poor, how appointed.**Vacancies, how filled.**Oath.**Poor to be farmed out.**When annual allowance may be made to paupers.**Minors to be put out as apprentices.**Overseers make return of their proceedings.*

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the commissioners of the several counties, shall at their first or second session in each and every year, nominate and appoint two substantial inhabitants of every township within their respective counties, to be overseers of the poor of such township.

SEC. 2. If any overseer shall die or resign, before the expiration of his office, the commissioners on due proof being made thereof before them, shall appoint another in his stead. Every overseer so nominated and appointed, shall before he enters upon the execution of his office, take an oath or affirmation, which any judge or justice is hereby authorized to administer, that he will discharge the duties of overseer of the poor, truly, faithfully and impartially, to the best of his knowledge and ability.

SEC. 3. It shall be the duty of the overseers of the poor, every year, to cause all poor persons, who have or shall become a public charge, to be farmed out, on contracts to be made, on the first Monday in May annually; in such manner, as the said overseers of the poor shall deem best calculated to promote the general good: *Provided* nothing herein contained, shall prohibit any overseers of the poor, from receiving and accepting propositions at any time, for the keeping of such poor and others, who may at any time thereafter become a county charge: *Provided however,* That the board of county commissioners of the several counties in this state, may in their discretion, allow and pay to poor persons, who may become chargeable as paupers, who are of mature years and sound mind, and who from their general character, will probably be benefited thereby, such annual allowance as will be equal to the charge of their maintenance, by employing the lowest bidder to keep them; the said commissioners taking the usual amount of charges in like cases, as the rule in making such allowance: *Provided however,* That the overseer of the poor in no case, shall farm out any pauper under the age of twenty-one years, if a male, or if a female, under the age of eighteen years, if such overseers of the poor, can possibly bind out as apprentices, any such paupers.

SEC. 4. The overseers of the poor shall make a return to the clerk of the county commissioners, of the sum or sums of money, for which the poor of their respective townships were farmed out, within fifteen days after every such contract shall have been made; which sum shall be paid quarterly, out of the county treasury, upon the order of the

county commissioners, in the same manner as other claims in the county are paid.

SEC. 5. It shall be the duty of the overseers, on any complaint made to them, on behalf of the poor, to examine into the ground of such complaint, and if, in their opinion, the poor have not been sufficiently provided with the common necessities of life, or have in any respect been ill-treated by the farmers aforesaid, it shall be lawful for the overseers to withhold any part of said compensation.

SEC. 6. It shall be lawful for the overseers of the poor of the township aforesaid, to put out as apprentices, all poor children whose parents are dead, or whose parents, shall be by the said overseers found unable to maintain them; males until the age of twenty-one, and females until the age of eighteen years.

SEC. 7. It shall be the duty of the overseers of the poor, to enter on the poor book of their respective townships, all poor persons in their townships, who are unable to take care of themselves, and who shall in their opinion be entitled to the benefit of this act, together with the date or time of the entry of such person.

SEC. 8. If any person appointed overseer of the poor of any township, shall refuse or neglect to take upon himself the said office, he shall forfeit six dollars, to and for the use of the poor of such township.

SEC. 9. If any overseer shall remove out of his proper township, he shall before his removal, deliver over to some other overseer of the township from which he removes, all books, papers and other things concerning his office; and upon the death of any overseer, his executors or administrators, shall within forty days after his decease, deliver over all things belonging to his office to some other overseer.

SEC. 10. The overseers of the poor for the several townships, shall forever hereafter, in name and in fact, be, and they are hereby declared to be bodies politic and corporate in law, to all intents and purposes; and shall have perpetual succession, and may by the name of The Overseers of the Poor, of their respective townships, sue and be sued, plead and be impleaded, in all courts of judicature; and by that name, shall and may purchase, take or receive any lands, tenements or hereditaments, goods, chattels, sum or sums of money, to and for the use of the poor of their respective townships, of the gift, alienation or devise, of any person or persons whomsoever; to hold to them the said overseers and their successors in trust, for the use of the poor forever.

SEC. 11. Any person who shall have been a resident of any county, one whole year, next preceding his, or her pauperism, shall be deemed to have a legal settlement in said county, as a poor person, within the provisions of this act.

*Inquire how paupers are treated.**For abuse, to withhold compensation**Put out poor children as apprentices.**To keep poor book.**Penalty for neglect of duty.**Books and papers, when to be delivered over.**Body politic & corporate.**Legal settle- ment.*

SEC. 12. Every married woman during coverture, and after her husband's death, shall be deemed to be legally settled, in the place, where he was last settled.

Paupers when removed.

SEC. 13. Upon any complaint made by the overseers of the poor of the proper county, to any justice of said county, wherein such township is situate, it shall and may be lawful for any one justice of the peace of said county, where any person not a citizen of such township, according to the provisions of this act, is or are likely to become chargeable to said county, where he, she, or they, shall have come to inhabit, by his warrant or order, directed to the said overseers, to remove and convey such person or persons to the county, township, or state, where he, she, or they was or were last legally settled; unless such person shall give sufficient security, to discharge and indemnify the said county or place, to which he, she, or they is or are likely to become chargeable.

Transient poor, how provided for.

SEC. 14. That hereafter should any one within the description of poor persons named in this act, be found in any county or township, and the overseers of such township, be unable to ascertain and establish, the last place of legal settlement of such poor person, it shall be lawful for the overseers to proceed to farm out such poor person, in the same manner that other poor persons are directed to be farmed out, by this act.

When pauper may apply to commissioners.

Appeal.

Notice.

SEC. 15. If any poor person shall suppose, that he or she is entitled to the benefit of the laws for the relief of the poor, and the overseers of the township in which he or she resides, shall refuse to give such person the benefit thereof, upon application of such person, the board of county commissioners, may, if they think proper, direct the overseers to receive him or her, upon their poor list.

SEC. 16. If any person shall think himself or herself aggrieved, by any order or removal made by any of the said justices, such person may appeal to the next circuit court for the county, from whence such person shall be removed; which said court shall determine the same, and if there be any defects of form in such order, the said court shall cause the same to be certified and amended, without any costs to the party; and after such amendment, shall proceed to hear the truth and merits of the cause. But no such order of removal shall be proceeded on, unless reasonable notice be given, by the overseers of the township appealing, to the overseers of the township, from which the removal shall be; the reasonableness of which notice, shall be determined by the court, to which the appeal is made; and if it shall appear to said court, that reasonable notice was not given, then the appeal shall be continued to the next court, at which time, the same shall be determined.

SEC. 17. If any person be removed by virtue of this law,

from one county, township, or place, to any other place within this state, by warrant or order, under the hand and seal of any justice of the peace as aforesaid, the overseers of the poor of the township or place, to which the said person shall be removed, are hereby required to receive such person.

SEC. 18. Whereas it sometimes happens, that men separate themselves without reasonable cause from their wives, and desert their children, and women also desert their children, leaving them a public charge, although such person may have estates, which would contribute to the maintenance of such wives or children, it shall and may be lawful for the overseers of the poor of such township or place, having first obtained a warrant or order from one justice of said county or place, where such wife or children shall be so left or neglected, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father or mother, as said justice shall order and direct, as a provision for such wife's maintenance, or support of such child or children, as the case may be; which warrant or order, being confirmed at the next circuit court for the county, it shall and may be lawful for the said court, to make an order for the overseers to dispose of such goods and chattels, by sale or otherwise, or so much of them for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the said court, of his or her lands or tenements: and if no estate real or personal, of such husband, father or mother, can be found, wherewith provision can be made as aforesaid, it shall and may be lawful to and for the said court, to order the payment of such sums, as they shall think reasonable, for the maintenance of any wife or children so neglected, and commit such husband, father, or mother, to the common jail, there to remain, until he or she comply with the said order, give security for the performance thereof, or be otherwise discharged by the said court; and on complaint made to any justice of the peace in any county, of any wife or children being neglected, such justice shall take security from the husband, father, or mother, neglecting as aforesaid, for his or her appearance at the next court, there to abide the determination of said court; and for want of security, to commit such person to jail.

SEC. 19. If any person shall find himself or herself aggrieved by any judgment of a justice of the peace, in pursuance of this act, such person may appeal to the next circuit court for the county, where sentence was given, except in cases of removal, and cases of poor persons becoming chargeable in one place, who are legally settled in another,

Persons deserting wives or children, liable for their maintenance.

Proceedings to be confirmed by circuit court.

Orders of the court, how enforced.

Appeal.

*Actions bro't
against over-
seers, how de-
fended.*

*Poor persons,
how to insti-
tute and de-
fend suits.*

Oath.

Costs.

as is otherwise provided by this act; whose decision in all such cases, shall be conclusive.

SEC. 20. If any action shall be brought against any overseer or other person, who in his aid, and by his command, shall do any thing concerning his office, he may plead the general issue, and give this act and every special matter in evidence; and if the plaintiff shall fail in his action, discontinue the same, or become nonsuit, he shall pay the costs.

SEC. 21. Every poor person, who shall have a cause of action against any person within this state, or who shall be defendant in any suit, shall have by discretion of the court before whom he or she would sue, writs original, writs of subpoena, and other process, according to the nature of his or her cause, nothing paying for the same; and the said court shall direct the clerk to issue the necessary process, shall assign to him or her, counsel learned in the law, and appoint all other officers requisite and necessary to be had, for the prosecution of the said suit; who shall perform their several duties, without fee or reward for the same; and if any counsel so assigned as aforesaid, shall take or receive any fee or reward therefor, either directly or indirectly, he shall forfeit and pay the sum of five hundred dollars, to the use of the party aggrieved, to be recovered by action of debt, with costs of suit.

SEC. 22. Any judge of the circuit court, shall have the same powers in vacation, to order the clerks of their respective courts, to issue writs and other process, for any poor person, according to the nature of the cause, and to assign counsel, and appoint all other officers requisite and necessary to be had, for the speed of the suit.

SEC. 23. On the application of any poor person to the courts or judges thereof, for any writ or writs, or other process as aforesaid, it shall be the duty of such poor person, previously to make oath before some court, judge or justice of the peace, that he, she or they, (as the case may be,) are not worth in property, clear of all debts, ten dollars; and that he, she or they consider themselves unable, either by industry or otherwise, to procure a sufficiency of money to carry on, or defend said suit or suits, mentioning the suit or action; and that injustice as he, she or they believe, is likely to be done them, for want of money or property, sufficient to carry on the said suit or action; which oath shall be attested by the judge, clerk or justice, administering the same, and shall be lodged with the court or judge, to whom the application is made. No defendant gaining any suit or action brought against them by such poor person, shall be held responsible for, or bound to pay any costs that may have accrued in defending such suit or action; but if any poor person shall obtain a judgment, he or she shall recover full

costs, and the officers concerned, shall receive their fees accordingly.

SEC. 24. The board of county commissioners of the several counties, are hereby authorized to settle with the overseers of the poor, in the several townships of their respective counties, as often as they may think it necessary, and also to make to the overseers of the poor, a reasonable compensation for their service.

*Commission-
ers to settle
with overseers
Compensa-
tion.*

SEC. 25. It shall be the duty of the overseers of the poor on complaint made to them, that any persons, not citizens of their respective townships, are lying therein sick or in distress, without friends or money, so that he, she or they are likely to suffer, to examine into the case of such persons, and grant such temporary relief, as the nature of the case may require; and if any person shall die, within any township of this state, who shall not leave property, money or effects to defray funeral expenses, it shall be the duty of the overseers of the poor of such township, to employ some person to provide for and superintend the burial of such decedent; and the reasonable expenses of such funeral, shall be paid by order of said overseers; and the county commissioners of the proper county, at their next meeting, shall examine such account, and if found reasonable, shall give an order on the county treasurer for the amount thereof.

*Overseers,
when to re-
lieve persons
sick or in dis-
tress.*

SEC. 26. The directors of the poor house in Knox county shall annually lay before the board of county commissioners, an estimate of the amount required for the support of the poor of said county, on the day the commissioners are required to lay and assess the state and county tax. And it shall be the duty of the commissioners annually, to levy and assess a tax for the support of the poor of their county, on the objects from which the county revenue is, or may be directed by law to be raised; the tax hereby authorized to be laid, shall be collected by the same person or persons, whose duty it may be, to collect the state and county revenue, and pay the same into the county treasury. The directors of the poor shall present their accounts to the board of commissioners for settlement, and when they allow any account presented by the directors of the poor, they shall draw on the county treasurer, whose duty it shall be, to pay the same out of any monies in the treasury not otherwise appropriated.

*When to pro-
vide for the
burial of de-
ceased per-
sons.*

SEC. 27. That the commissioners of the county of Clark whenever they shall deem it advisable, shall purchase and hold a tract of land in the name of the county, and erect such buildings thereon, for the accommodation of the poor, as they may deem expedient and proper; and in order that the same may be effected, the commissioners shall have power for such purpose, to assess on property, liable to be assessed for raising a county revenue, not exceeding one

*Directors of
the poor house
in Knox coun-
ty, their du-
ties, &c.*

*Commission-
ers of Clark
county may
erect a poor
house.*

fourth, in addition to the rates, at which such property may be assessed by the existing laws.

Paupers may be removed to such asylum. SEC. 28. That so soon as the necessary provisions may be made, by the erection of the proper buildings, the said commissioners shall order and direct, that all persons who have become a permanent charge, as paupers on their county, be removed to such asylum, and shall take such measures, for the employment and support of such paupers as they may deem advisable.

Directors may be appointed. SEC. 29. That in order to aid in the employment and support of the poor aforesaid, at such asylum, they are hereby authorized to appoint, two or more directors to manage such institution, under such regulations, as said commissioners may appoint.

SEC. 30. That whenever such establishment may be arranged, and put in operation as aforesaid, the said overseers of the poor, shall from time to time, as persons may become permanent charges, as paupers, have such persons removed to the said asylum. And the directors of such asylum, shall have all powers by this act granted to the overseers of the poor, herein before granted, so far as the same may be necessary and expedient; and shall from time to time, as they may be directed by the commissioners, report to them concerning said asylum.

CHAPTER LXXIII.

An Act regulating the Practice in Chancery.

APPROVED, JANUARY 28, 1824.

Bills, when filed. SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That original bills may be filed in vacation or in term time; and that thereupon process may forthwith issue under the seal of the court, returnable to the first day of the next term of the court.

Process, when directed to another county. SEC. 2. When one or more of the defendants resides in or flies to another county, the process may be directed to such county, and there executed by the proper officer, but no decree shall be entered against such defendant or defendants, unless a cause of action shall be made out against some defendant who resided in the county, at the time of filing the bill. But in all cases where the cause of action is local, or where it shall appear by affidavit that the defendant has removed from the county, after the filing of the bill, the process may issue from that, to any other county, and be served by the proper officer, and decree be thereupon had, according to the rules of the court, as in any other

case. And when process is returned not executed at the return day thereof, the clerk may issue an alias pluries, or other process, without an order of court. And in all cases where the cause of action is local, and the subject matter thereof is situate in several counties, the complainant shall have his election in which of the several counties he will commence his suit, and the court of chancery of such county, shall have jurisdiction thereof.

Alias, pluries, &c. may issue.

Complainant may have his election, in what county to commence suit.

SEC. 3. Whenever it shall appear by affidavit filed, or the officer's return, that any defendant is not found, or is not a resident of this state, the court may grant an order for publication, to notify the defendant of the pendency of the bill, for three weeks successively in some public newspaper.

Order for publication, when granted.

SEC. 4. The sheriff or other officer shall endorse on the process, the time it was received and executed, subject to the same regulations and penalties, as are prescribed in the eighth section of the act regulating the practice in suits at law.

Sheriff endorse time of receiving process.

SEC. 5. The complainant may make as many defendants to his bill as he may think proper, although they may claim under different titles; but if the bill be dismissed as to any one of the defendants, or a decree entered in his favour, he shall be entitled to his costs, unless the court for special reasons shall otherwise decree.

Complainant may make as many defendants as he may think proper.

SEC. 6. The complainant may amend his bill at any time before answer, or in an immaterial part after answer, without the payment of costs; but if he amends in a material part, after answer, he shall pay the costs occasioned by the amendment. And the defendant may amend his answer before or after replication, subject to the same rules; but after appearance, process executed, or publication, the amended bill shall not require new process or publication.

Amendment.

SEC. 7. When the process has been executed thirty days, or publication made sixty days before the term, the defendant shall plead or answer, on or before the first day of the term, and shall not thereafter file any special demurrer or dilatory plea; and if he fails to plead, answer, or demur, on the calling of the cause, the bill may be taken as confessed against him. If he pleads, answers, or demurs, the complainant shall reply, and the defendant rejoin, and so on, if necessary, until the issues in law, or in fact are made up; and if either party fails to complete the issue on his part, the court for such failure, may enter up a decree against him, or in their discretion, give further time for the completion of the issue.

Defendant, when to plead

SEC. 8. All answers shall be upon oath or affirmation, *Answers shall be on oath.* and if the answer denies the material allegations in the bill, the complainant shall not have a decree, unless the bill is

*Defendant
may intro-
duce new
matter.*

New party.

*Exceptions to
answer, when
taken.*

*Issue, how
made up, and
when tried.*

*After trial of
issue or over-
ruling of de-
murrer, court
may appoint
a time for de-
fendant to an-
swer.*

Attachments.

*Pleadings
may be lodged
with the clerk
in vacation.*

*Depositions,
when taken.*

*Parties failing
to prosecute
and appear,
court may dis-
miss.*

*Decree, when
opened.*

proved by two witnesses, or by one witness and corroborating circumstances.

SEC. 9. The defendant may introduce any new matter in his answer, or file interrogatories, and call upon the complainant to answer on oath or affirmation; which the complainant shall do, under the same regulations, that are imposed on the defendant in answering the bill, except that he may either answer immediately, or demand a continuance, and have until the first day of the next term to answer.

SEC. 10. The defendant may by his answer introduce a new party, and call upon him to answer any allegations or interrogatories he may set forth; whereupon process may issue, and such other proceedings be had, as if such matter had been exhibited by bill.

SEC. 11. Exceptions to an answer, may be taken at any time before replication, and shall stand for hearing, at the term when they are taken.

SEC. 12. The issue may be made up by bill and answer, where a special replication is unnecessary; and when depositions are to be taken, the cause shall stand for hearing, at the term next after the issue is completed. When an issue is to be tried by a jury, the court may appoint the time of the trial, as soon as the circumstances will admit of it; and issues in law shall stand for trial, as soon as they are made up.

SEC. 13. After the trial of an issue, or the overruling of a demurrer, in a case where by the chancery practice the defendant has a right to answer, or where an answer has been adjudged insufficient, the court may appoint a time, in which the defendant shall answer; and if he fails to answer in that time, they may proceed against him, as for a failure in the first instance.

SEC. 14. Attachments for failing to answer, may be issued by the court, returnable at such time, as they may appoint.

SEC. 15. Either party may lodge his answer or other pleadings, with the clerk in vacation; but they shall not be considered as filed, until entered on the order book in open court. The clerk shall endorse on them, the time they are filed in court, but need not copy them on the order book.

SEC. 16. The complainant may take depositions in thirty days, after the subpoena has been executed or publication made; and the defendant may take depositions, as soon as his answer is filed; each giving the opposite party, reasonable notice of the time and place they are to be taken.

SEC. 17. If at any time the complainant fails to prosecute, and the defendant fails to appear, the court may dismiss the bill, or continue the cause, at their discretion.

SEC. 18. Whenever a decree is entered up against an absent non-resident defendant, he shall be permitted to open the decree, at any time within one year, by appear-

ing and answering the complainant's bill, and paying the costs subsequent to the regular time of answering. And if such defendant is an infant, feme covert, non compos mentis, or beyond sea on public business, he or she shall be allowed one year after such disability is removed, in which to open such decree.

SEC. 19. Bills of review and revivor, and supplemental bills of review may be filed according to the usage of courts of chancery; and continuances granted for good cause, at any stage of the proceedings on payment of costs.

SEC. 20. The court in term time, or the circuit judge, or the two associates, in the presence of each other in vacation, may award injunctions. The associate judges may award them, to operate in their own county, and the circuit judge may award them, to operate in any court, over which he presides.

SEC. 21. Injunctions shall not be awarded, but upon bill filed, and supported by oath or affirmation, nor unless the court, judge or judges awarding the same, shall be satisfied of the complainant's equity; nor unless the complainant shall give bond, with security approved of by the court, judge or judges, in a sum sufficient to secure the payment of the judgment so enjoined, with ten per centum thereon, and all costs; nor unless the complainant shall release all errors in the judgment at law, under his seal, to be filed in the suit at law, and certified by the clerk on the bill; nor for a greater sum, than the complainant shall shew he is not equitably bound to pay; nor unless the sum to be enjoined, is sufficient to give original jurisdiction to the court; nor until the opposite party has had ten days notice, of the time and place of the application, except the application is made in open court, when no notice shall be required. The circuit courts in this state, may and they are hereby authorized to exercise chancery jurisdiction on bill filed, in cases made cognizable before justices of the peace, and decree on the same, as in other cases.

SEC. 22. Whenever an injunction is awarded, the clerk shall issue a subpoena with the injunction, which shall enjoin all parties, attorneys and officers, from proceeding on the judgment so enjoined; and all proceedings on said judgment, and any execution thereon, shall be immediately stayed; and every officer in the state, shall immediately desist from any further proceedings thereon; and if the sheriff or other officer, shall have taken any money or property on said judgment, he shall restore the same to the person from whom it was taken, and return such execution enjoined.

SEC. 23. Motions to dissolve injunctions on the bill for want of equity, may be made without notice, but motions to dissolve on bill and answer, or on bill, answer and exhibits, & when made.

*Not awarded
unless bill filed
and supported
by oath.*

Bond given.

*Errors releas-
ed.*

*Jurisdiction
in cases cog-
nizable before
justices of the
peace.*

*Subpoena to
issue with in-
junction.*

*Motions to
dissolve in-
junctions, how
& when made.*

Writs of ne
execat, by
whom issued.

Court or judge
endorse in
what amount
bond shall be
taken of de-
fendant.

Writ, when
discharged.

Notices, to
whom given.

Costs, execu-
tion, &c.

Feigned issue
need not be
made up.

notice of such motion. On the dissolution of any injunction, the court shall decree in favour of the defendant, ten per centum on the judgment at law.

SEC. 24. The court in term time, or the circuit judge, or the two associates in presence of each other in vacation, may grant writs of *ne execat*; but not until the bill is filed, and supported by oath or affirmation, nor until the party applying for the same, shall give bond in the clerk's office in such sum, and with such security, as the court, judge, or judges granting the same, may direct; conditioned for the payment of all damages the defendant may sustain, if it shall appear that said writ was obtained, without just cause. And if the party so stayed, shall think himself aggrieved thereby, he may bring suit on said bond; and if it shall appear that the writ was unjustly obtained, he shall recover the damages he has thereby sustained.

SEC. 25. The court, judge, or judges granting said writ, shall endorse thereon, in what penalty bond with security shall be required of the defendant; and if the defendant shall go out of the state, and return before his appearance in court is required, or before it is necessary for him to perform any order of the court, such departure shall not be considered a breach of the condition of said bond.

SEC. 26. If the defendant shall by answer or otherwise satisfy the court, that there is no reason for his being restrained, or give sufficient security to perform the decree of the court, the writ may be discharged.

SEC. 27. All notices required by this act, shall be given to the party, his agent, or attorney at law, if either of them resides in this state, and may be served by the sheriff or other officer of the proper county. But if neither the party, his agent or attorney resides in the state, the notice may be filed in the clerk's office where the suit is depending, or published three weeks successively in some public newspaper.

SEC. 28. Costs shall be taxed in favour of the succeeding party, except the court for special reasons shall otherwise decree, and executions may issue into any county in this state, to carry decrees into effect, in the same manner, and to operate in the same way, as on judgments at law.

SEC. 29. It shall not hereafter ever be necessary to make up a feigned issue, but in all cases where questions arise, which according to the practice, usage and discretion of courts of chancery, ought to be referred to a jury for trial, the court shall direct a comprehensive entry and note, of the matter in issue so to be tried, to be made; upon which the court may order a jury empanelled and sworn to try the same, and the verdict of such jury shall be taken for the information of the court.

SEC. 30. The president judges of the circuit courts in

*Master in
chancery, how
appointed.*
this state, shall have power to appoint as many masters in chancery, as such courts may deem expedient; which masters in chancery shall reside in the proper counties for which they may be appointed, and shall hold their appointments until removed by said court.

SEC. 31. Each and every master in chancery so as aforesaid appointed, shall before he enters upon the duties of his office, take an oath before the clerk of the circuit court of the proper county, that he will well, truly, impartially and faithfully discharge the duties of master in chancery, which said oath such clerk shall enter of record, on his order book.

SEC. 32. The duties of such masters in chancery, shall be to take the attestation or oath, of all bills and answers in chancery, to which an oath is necessary, to take depositions and administer oaths to witnesses, and to strike the balance of accompts which may be in controversy.

SEC. 33. Such masters in chancery, for the taking of depositions, administering oaths, and taking acknowledgments, shall have the same fees, which are allowed to justices of the peace for like services; and for striking the balance of accompts, such fees as the court shall deem reasonable; to be taxed with the costs, as part thereof, in favour of the party gaining the suit: *Provided however*, nothing in this act shall be so construed, as to prevent justices of the peace, from taking depositions and acknowledgments, and administering oaths as heretofore.

Their oath.

CHAPTER LXXIV.

An Act regulating the Practice in suits at Law.

[APPROVED, JANUARY 30, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the plaintiff shall file his declaration, before the issuing of the capias ad respondendum; and where it is not filed before the writ issues, the case shall be subject to the regulations in the eighteenth section of this act.

Declaration,
when to be fil-
ed.

SEC. 2. All process (except subpoenas) shall be sealed by the clerk with the seal of the court, and made returnable to the first day of the next term.

Process.

SEC. 3. The process against a corporation shall be a summons, which being executed, the proceedings shall be the same, as in other respects against natural persons.

Against a cor-
poration shall
be a summons.

SEC. 4. Bail shall be required, in all actions of debt and case founded on any writing, for the payment of money; and in actions of covenant and detinue; and in all actions

Bail, in what
cases required

where an affidavit shall be made by the plaintiff or any person on his behalf, and filed in the clerk's office, of an existing debt, then due from the defendant to the plaintiff. And the sum specified, in such writing or in such affidavit, shall be endorsed, by the clerk on the writ, and in all other actions, whenever it shall appear to any judge of the circuit court, by an affidavit filed in the clerk's office, that bail should be required of the defendant, he shall endorse on the writ an order to that effect, specifying the amount in which bail shall be required.

Recognizance
of special bail.

SEC. 5. When process, requiring bail is executed, no appearance bail bond shall be taken, but the officer executing the same, shall take a recognizance of special bail, of some freeholder resident in the state, on the back of the process, in substance as follows: *I A. B. do hereby acknowledge myself as special bail for the within named C. D., in the suit named in the within writ. Witness my hand and seal this day of*

A. B.

Which shall have all the force and effect of a regular recognizance of special bail, and shall be in all respects obligatory as such.

Sufficiency of
bail may be
objected to.

SEC. 6. If the plaintiff shall deem the bail insufficient, he may at the term to which the writ is returned, or at the term next thereafter (if final judgment shall not be given) object to the sufficiency of the bail, by giving three days notice of the objection, to the officer, to whom the writ was directed, and the court shall hear and determine, as to the sufficiency of the bail as heretofore. If the notice is adjudged insufficient, the court may allow the plaintiff until the next term, to give notice, and make his objections, if final judgment, in the mean time, shall not be given.

Bail insuffi-
cient, officer
liable.

SEC. 7. If the bail is adjudged insufficient, and other bail approved by the court, is not given, the bail shall not be thereby discharged, but if the plaintiff shall proceed to judgment against the bail, and the demand cannot be obtained, the officer shall be liable for the amount of his demand, and all costs of suit, which may be recovered in an action against the officer or his securities or all or either of them.

Return of writ
must shew the
time it was
executed.

SEC. 8. When the sheriff executes any writ or process of any description, he shall insert, in his return, the time it was executed, and also endorse on all process, except subpoenas, the time such process came to his hands.

Alias, pluries,
&c. may issue
without order
of the court.

SEC. 9. When the process shall not be returned executed on the return day thereof, the clerk may issue an alias pluries or other process without an order of the court: or if the process should be returned "executed" as to one or more of the defendants, and, not found, as to others, it shall be lawful for the plaintiff to suggest such return upon the record, and proceed to final judgment and execution, against the defendants, upon whom the process was executed, and

may, at any time thereafter proceed against those "not found," but it shall not be lawful for any officer to return not found, as to any defendant, unless he shall have been, once at least, to his usual place of residence, if he has any. Proceedings when process is returned not found, as to one or more of the parties.

SEC. 10. When one or more of the defendants reside in any other county in the state, the process may issue to such county, and be executed by the sheriff of that county, and returned to the office from whence it issued. But no judgment shall be given against such defendant, unless the process shall have been executed on some defendant, who resided in the county, where the suit was commenced.

SEC. 11. If the defendant resides in the county, where the suit is instituted, and shall afterwards flee or remove therefrom, the plaintiff, on filing an affidavit of the fact, may have process directed to any other county, and if it is returned executed, he may proceed as in other cases.

SEC. 12. All actions of debt, on simple contract, and for rent arrear, actions on the case, (other than for slander,) actions of account, trespass, trespass quare clausum fregit, detinue, and replevin for goods and chattels, shall be commenced within five years after the cause of action accrued, and not after. All actions of trespass, assault and battery, wounding and imprisonment, shall be commenced within three years, after the cause of action accrued, and not after. All actions upon any act of assembly, now or hereafter to be made, when the right of action is limited to the party aggrieved, shall be commenced within two years after the cause of action accrued, and not after, except when the right of action is limited, by the act, to a shorter period; and all actions of slander shall be commenced within one year, after the cause of action accrued, and not after, saving however, the rights of infants, females covert, persons non compos mentis, or without the jurisdiction of the state, until one year after their several disabilities are removed: *Provided however*, that no statute of limitation shall ever be plead as a bar, or operate as such, to any action, founded on an instrument or contract in writing, whether the same be sealed or unsealed.

Limitation of
actions.

SEC. 13. No suit shall be commenced by a non-resident, until he shall file in the clerk's office a bond, with security to be approved of by the clerk, for the payment of all costs that may accrue in consequence thereof, either to the opposite party, or to the officers of the court, but the suit shall not be dismissed for the want of such bond, if the plaintiff shall file the same, in open court, on the calling of the cause, which bond, when executed, shall have a retrospective effect, and include all previous costs, and such bond for costs may be put in suit, by any of the aforesaid persons, for the sums to which they may be respectively entitled.

Non-resident
give bond for
costs.

SEC. 14. When suit is brought on any bond given by any

Proceedings
in suits on
bonds.

executor, administrator, or any state, county, or township officer; to and in the name of the governor, the associate, or other judges, sheriff, or other civil officer, for the performance of any duty or trust, it shall be the duty of the person, for whose benefit the same was instituted, to endorse on the writ or other process, for whose benefit the same was issued, and if he fails to succeed in the suit, he shall be liable for all costs that accrue thereon.

Clerk make
out docket for
succeeding
term.

SEC. 15. The clerk within three weeks after the adjournment of the court, shall make out his docket for the succeeding term, wherein he shall docket all suits then in court, and whenever afterwards, a writ is issued, he shall enter the suit on his docket: he shall set as many causes for each day, as in his opinion, will be disposed of by the court, always docketing the actions of debt, for the second day, and the chancery cases at the end of the common law suits, to no particular day, which may be taken up at any time, in the discretion of the court.

Subpoenas,
when to issue.

SEC. 16. The clerk shall issue subpoenas, on the application of either party, in all cases where the declaration has been filed, and the writ issued ten days before the return day; inserting the name of all the witnesses that may be called for, at the same time, in one subpoena.

Suits stand for
trial, &c.

SEC. 17. All suits shall stand for trial at the term to which the process is returned executed, but if it shall not appear by the officer's return, that the process was executed, ten days before the return, it shall be continued until the next term, unless both parties consent to a trial.

Plaintiff file
declaration
on or before
the calling of
the cause.

SEC. 18. If the writ issues before the declaration is filed, the plaintiff shall file his declaration, on or before the calling of the cause, or on failure, the suit shall be for that cause dismissed, and he shall not have a right to demand a trial, until the next term after the declaration is filed.

Pleas.

SEC. 19. The plaintiff, in replevin, and the defendant in all actions, may plead as many several matters, in law or fact, as he may deem necessary for his defence.

In abatement,
when filed.

SEC. 20. Pleas to the jurisdiction of the court, pleas in abatement, and special demurrers shall be filed, on or before the day, for which the cause is docketed, at the first term, at which it stands for trial, and shall not be received, at any time afterwards.

Certain pleas
must be sup-
ported by
oath.

SEC. 21. No plea in abatement, plea of non est factum, non assignment, nor any other plea, replication or other pleadings, denying or requiring proof of the execution, or assignment of any bond, bill, release, or other instrument of writing, which is the foundation of any suit, or defence, and is specially set forth in the declaration, plea, or other pleadings shall be received, unless supported by oath or affirmation. When such plea or other pleading denies, or requires proof of any assignment, the oath or affidavit shall

be, that the party has reason to believe, and does believe, that the assignment was not made, before the suit was commenced, or was obtained through fraud.

SEC. 22. In actions on bonds, or for any penal sum, for the non-performance of covenants, or agreements in any indenture, deed or other writing contained, the plaintiff may assign as many breaches, as he may think proper, and the jury, upon the trial of such action, may assess damages for as many of the breaches, as the plaintiff shall prove, and the like judgment shall be entered as heretofore in such actions; and if judgment on demurrer, by confession, or nihil dicit, shall be given for the plaintiff, he may assign as many breaches of the covenants or agreements, as he may think proper, and the jury shall enquire into the truth of those breaches, and assess the damages the plaintiff has sustained thereby, and execution shall issue for that sum, and the judgment shall remain as a security to the plaintiff, his heirs, executors and assigns for any other breaches, that may afterwards happen, and he or they may have a scire facias against the defendant and assign any other breaches, and thereupon damages shall be assessed and execution issue, as in the first instance. And in actions on penal bonds for the payment of money, if the plaintiff shall recover, the judgment shall be given for the penalty of the bond, to be discharged, by the payment of the principal and interest and costs of suit, and execution shall issue accordingly, but if before judgment, the defendant shall bring into court the principal and interest due on such bond, he shall be discharged therefrom, and the judgment shall be given for the costs only.

SEC. 23. All bonds or obligations, by this or any other law, directed or required to be given, relating to minors or decedents estates, and all such bonds, as, by any law, are directed to be given, by any judge or other officers, or persons in office, for the due execution of his, or their respective offices or employments, are hereby declared to be to and for the use of, and in trust for the person or persons concerned, and the benefit thereof shall be extended, from time to time, for the relief and advantage of the party aggrieved, by the misfeasance or nonfeasance of the officers, that did or shall give the same.

SEC. 24. And when any of the said bonds, shall be put in suit, and judgment thereon obtained, the judgment shall remain in the same nature the bonds were, and no execution shall issue thereon, before the party aggrieved, by writ of scire facias, shall summon the person or persons against whom the said judgment shall be obtained, to appear and shew cause why execution should not issue upon said judgment, and if the party aggrieved shall prove what damages he has sustained, and a verdict shall be found for him, the

Actions on
bonds, &c.
plaintiff may
assign as ma-
ny breaches
as he may
think proper.

On penal
bond, how
judgment to
be given.

Bonds given
by public offi-
cers, for the
use of the per-
son concerned

Scire facias on
judgments on
said bonds
must issue be-
fore execution

court shall award execution for so much, as the jury shall then find with costs, and no more, and the former judgment shall remain cautionary for the satisfaction of such others, as shall legally prove themselves damaged, and recover their damages aforesaid.

SEC. 25. When any recognizance or bond and security is required by law, to be given by any public officer, executor or administrator, or any other person whatsoever, to secure the payment of money or performance of any contract or duty, for the benefit of the state or any individual, such recognizance or bond shall not be void for want of form; and when such bond or recognizance has not the substantial matter required by law, the principal obligor and his securities shall not on that account be discharged, but they shall be equitably bound to the party interested, and such party may by action of debt, or scire facias, in any court of competent jurisdiction, suggest that such bond or recognizance is defective, and recover his equitable demand of the principal and the person or persons who intended to become and were included as securities.

SEC. 26. In any action of debt on a bond, or single bill, or in debt, or scire facias, on a judgment, if before action brought, the defendant has paid the principal and interest due, by the defeasance or condition, he may plead payment in bar, and in any action to recover the forfeiture annexed to any articles of agreement, covenant, charter party or other writing obligatory, or for the forfeiture of real estate, by deed of mortgage, or bargain and sale, with a defeasance, (when such forfeiture, breach, or non-performance, is found by a jury, by confession, by default or on demurrer,) the court shall give judgment thereon, for so much as in equity and good conscience is due to the plaintiff.

SEC. 27. When two or more dealing together are indebted to each other, upon bonds, bills, bargains, promises, or the like, and one of them commences an action, if the other cannot gainsay the bond, bill, bargain, or promise, upon which he is sued, he may plead payment of all or part of the debt or demand, and give any bond, bill, receipt, account, or bargain in evidence, which shall be set forth in such plea; and if it shall appear, that the defendant has paid the debt or demand, he shall have judgment for costs; and if it shall be found that part of the sum has been paid, the plaintiff shall have judgment for the residue only: but if it shall appear that the plaintiff's demand is overpaid, the jury shall give their verdict for the defendant for the overplus, and the judgment shall be entered for him for that amount; and whether the judgment is for plaintiff or defendant, it shall carry full costs.

SEC. 28. In any action founded on any specialty or other contract, (conveyances of real estate and instruments nego-

Recogniz-
ance, bond,
&c. not void
for want of
form.

Remedy by
action of debt
or scire facias.

When defend-
ant may plead
payment in
bar in actions
on penal
bonds

Judgment in
such cases for
so much as is
equitably due.

Plea of pay-
ment.

tiable by the law merchant excepted,) the defendant, by special plea, may allege the want or failure of the consideration, or any part thereof of such specialty, or other contract, and if any specialty or other contract (excepting as aforesaid) is alleged in any other stage of the proceedings, the other party may aver in answer, and prove on trial the want or failure of the consideration in the whole or part of such specialty or other contract, and whenever such specialty or other contract, shall be given in evidence without being pleaded, the other party may (excepting as aforesaid) prove the want or failure of the consideration, or part thereof of such specialty or other contract.

SEC. 29. The pleadings may be made up at any time before the calling of the cause, and no rule to declare, plead, &c. shall be necessary. But when the cause is called, if the plea or pleas have not been filed, the defendant shall plead, the plaintiff reply, and the defendant rejoin, and so on until the issues in law or fact be made up, and a trial shall thereupon be had; and if either party shall fail to file his part of the pleadings, the court may enter judgment against him for such failure, unless for good cause shewn, they give him a further day, in that or the succeeding term, to file such pleadings, on the payment of the costs occasioned by the postponement; and if from any cause the issue is not made up in the time herein prescribed, or that may be prescribed by the court, the court shall have the same power, at each subsequent calling of the cause, to compel the completion of the issue.

SEC. 30. The court may give leave to amend the declaration or other pleadings, according to the former usages of courts, at the costs of the party amending; but such amendment shall be filed immediately, unless the court, for good cause, give further day; if the amendment is in matter of form, the trial shall not thereby be delayed, if it be in matter of substance, the other party may immediately answer thereto, whereupon the cause shall proceed, as if no amendment had been made, or he may, at his election, demand a continuance of the cause until the next term; if the plaintiff amends his declaration, the defendant may immediately demur thereto, for special cause, but if he demands a continuance, he shall not be afterwards permitted to file any special demurrer or dilatory plea, to the amended declaration; the court for good cause shewn may continue the cause at any stage of the proceedings, at the costs of the applicant.

SEC. 31. When the plaintiff might take an interlocutory judgment, but fails to do so, the defendant may file any plea to the merits of the action. And after interlocutory judgment and before the writ of enquiry is executed, the court, in their discretion, may set aside the interlocutory judg-

When defend-
ant may al-
lege the fail-
ure of consid-
eration.

Pleadings
may be made
up at any
time before
calling the
cause.

Court may en-
ter judgment
for failure to
plead.

Amendment.

Court may
continue at
any stage of
the proceed-
ings.

Interlocutory
judgment.

ment, and give the defendant leave to file a plea to the merits, but in either of these cases, the plaintiff may have his right of trial, and have a continuance of the cause.

Parties failing to appear, court may enter nonsuit or continue the cause.

Clerk shall endorse, on pleadings, and note in the order book, the time of filing.

Demurrer.

Charge of adultery, &c. against a female, actionable.

Seal.

Negro, mulatto, or Indian, when a witness.

Justice may take depositions without dedimus, &c.

SEC. 32. If on calling of the cause, the plaintiff fails to prosecute and the defendant fails to appear, the court may either enter a nonsuit against the plaintiff, or continue the cause.

SEC. 33. The clerk shall endorse on all pleas and pleadings, the time they were filed, and note the filing in the order book in open court; but it shall not be necessary to copy such pleadings, in the order book.

SEC. 34. When a demurrer is joined in any action, the court shall not regard any other defect in the writ, return, declaration, or other pleadings, but what shall be specially alleged in the demurrer, as cause thereof, unless something shall be omitted, so essential to the action or defence, that judgment according to law and the right of the case, cannot be given.

SEC. 35. After issue joined, in ejectment, on the title only, no exception of form or substance shall be taken to the declaration.

SEC. 36. Every charge of incest, fornication, adultery, or whoredom, made by any person, against any female, shall be actionable, and subject to the same rules and regulations it would be, if the charge was of a criminal nature, the commission of which would subject the offender to death, or degrading pains and penalties.

SEC. 37. All deeds, bonds, wills, powers of attorney for the conveyance of real estate, shall be executed with a seal, either of wax, wafer, or ink, otherwise called a scrawl, and all other instruments of writing, to which by law, or the agreement of the parties, a seal is necessary, may be sealed by either of those methods, and each shall have the same effect in law; except where an act of assembly shall require a specific seal to any particular instrument of writing.

SEC. 38. No negro, mulatto or Indian shall be a witness, except in pleas of the state against negroes, mulattoes or Indians, and in civil cases, where negroes, mulattoes or Indians alone are parties. Every person other than a negro, having one fourth part or more of negro blood, or any one of whose grandfathers or grandmothers shall have been a negro, shall be deemed a mulatto.

SEC. 39. Each and every justice of the peace in this state, by virtue of his office, is hereby invested with full power to take depositions, in suits at law, and in chancery, without a dedimus potestatem, and one justice shall be sufficient for that purpose, whose official certificate shall be a sufficient authentication; and when a dedimus potestatem shall issue from any court in this state, directed, by name, to any justice of the peace, in any other state, authorizing him to take

depositions, to be read in evidence, in any suit depending in said court, the certificate of such justice, officially certifying the taking of the same, shall be a sufficient authentication.

SEC. 40. When a witness resides without the state, his deposition may be taken and read in any suit. And whenever it shall appear by affidavit, that a witness is not a resident of, or is about to leave the state, or is unable, by age, sickness or otherwise to attend the court, or where the claim or defence of any party or a material part thereof, depends on a single witness, the circuit court, in term time, or the clerk, in vacation, may issue a commission for taking the deposition of such witness, to be read in evidence, on the trial of the cause, in case the witness shall be unable to attend; the party taking the same, giving due notice to the opposite party.

SEC. 41. All notices required by this act, shall be given to the party, his agent, or attorney at law, if either of them resides within this state, and may be served by the sheriff or other officer of the proper county, but if neither the party, his agent, nor attorney resides in the state, the notice may be filed in the clerk's office, where the suit is depending, or published three weeks successively in some public newspaper.

SEC. 42. In all cases of judgment on demurrer, by nihil dicit, or default, where the matter charged in the pleadings, depends upon calculation, or can be reduced to certainty, the court may give judgment, for the debt or damages, to which the party is entitled, or either party may demand a jury to inquire of such debt or damages, and when the parties, in any suit, shall, by agreement, submit any matter to the determination of the court, they may hear and determine the same, without a jury, and give judgment as in other cases.

SEC. 43. In all actions, that may be tried in any court of record, each party shall have the right of peremptory challenge to three jurors, and juries de medietate linguae, may be empanelled whenever necessary.

SEC. 44. Interpreters may be sworn to interpret truly, whenever necessary.

SEC. 45. Every person desirous of suffering a nonsuit, shall be barred therefrom, unless it be done, before the jury retire from the bar.

SEC. 46. When there are several counts, one of which is faulty, and entire damages are given, the verdict shall be good, but the defendant may apply to the court to instruct the jury, to disregard such faulty count.

SEC. 47. Papers read in evidence, though not under seal, may be carried from the bar by the jury.

SEC. 48. If verdict in detinue omit price or value, the

Depositions
de beng esse,
may be taken.

Notices, to
whom given.

In what cases
the court may
hear and de-
termine with-
out a jury.

Challenge.

Interpreters
may be sworn.

Nonsuit.

Faulty count
disregarded.

Papers read in
evidence, may
be carried
from the bar
by the jury.

If verdict in
detinue omit
price, court
may award a
writ of inquiry

Not more than
two new trials
granted.

Cases against
special bail,
when dismiss-
ed.

Bail piece.

Suits abated,
how revived.

Judgment af-
ter verdict
shall not be
stayed or re-
versed for va-
riance in the
writ, &c.

court may at any time, award a writ of inquiry to ascertain the same, and if on an issue concerning several things in one count in detinue, no verdict be found for part of them, the verdict shall be good, but the plaintiff shall be barred of his title to the things omitted.

SEC. 49. Not more than two new trials shall be granted to the same party, in the same cause: *Provided* that the supreme and circuit courts, in the granting of new trials, shall grant the same on the payment of costs, or on the costs abiding the event of the suit, as the justice and equity of the case may require, taking into consideration the causes, which may make such new trial necessary.

SEC. 50. In all cases against special bail, if the principal shall surrender himself, or be surrendered by the bail, before judgment is given against the bail, such suit shall be dismissed, at the costs of the bail, and the court shall enter an exoneretur on the record, and the bail shall be forever discharged. A bail piece from any sister state, duly authenticated according to the laws of the United States, shall be deemed good authority for special bail, to arrest and take his principal without the state; and if the bail do not wish to take their principal without the state, a bail piece, with the county seal annexed, shall be sufficient authority.

SEC. 51. Whenever any suit shall abate, by the death of the plaintiff, his heirs, executors, or administrators, may revive the same by issuing a scire facias against the defendant; where the suit abates before the declaration is filed, such representatives may file the same in their representative character, and proceed to judgment, as if the suit had been instituted by them.

SEC. 52. When the defendant dies, the plaintiff may revive the suit by scire facias against his heirs, executors or administrators, who may appear and plead, in their representative character, as if the suit had been originally against them: If there are no representatives within the jurisdiction of the court, the plaintiff on the return of the scire facias "not found," may take judgment against such heirs, executors or administrators, subject however to be opened at any time within seven years, by either the heirs, executors or administrators, for the purpose of admitting any set off, or equitable defence; but actions of slander and assault and battery shall not be revived.

SEC. 53. No judgment, after the verdict of twelve men, shall be stayed or reversed, for any defect or fault in the writ original, or judicial, or for a variance in the writ from the declaration or other proceedings, or for any discontinuance, misjoining of the issue, or lack of warrant of attorney, or for the appearance of either party, being under the age of twenty-one years, by attorney, if the verdict be for him and not to his prejudice, or for not alleging any deed, let-

ters testamentary, or letters of administration to be brought into court, or for the omission of the words "with force and arms," "against the peace;" or for the mistake of the given name, or surname of either party, sum of money, quantity of merchandize, day, month or year, in the declaration or pleadings, the name, sum, quantity or time, being right in any part of the record or proceedings, or for the omission of the averment "this he is ready to verify," or "this he is ready to verify by the record," or for not alleging "as appears by the record," or for omitting the averment of any matter, without the proving of which the jury ought not to have given such verdict, or for not alleging, that the suit or action is within the jurisdiction of the court, or for any informality in entering up the judgment by the clerk; neither shall any judgment entered, by nihil dicit, or non sum informatus, be reversed, nor judgment, after inquiry of damages, be stayed or reversed, for any omission or fault, which would not have been good cause to stay or reverse the judgment, if there had been a verdict; and a judgment by confession, shall be equal to a release of error. And for the further prevention of delay, by arresting judgment and vexatious appeals, the several acts of parliament, commonly called statutes of jeofails, which were in force in England, on the seventh day of February, one thousand seven hundred and fifty two, or so much thereof, as relates to jeofails, mispleading and amendment, are hereby declared to be in full force in this state.

SEC. 54. Each day's proceedings of the court shall be drawn up at full length by the clerk, which after being read in the presence of the court, shall be signed by the president or the two associate judges.

SEC. 55. The clerk shall enter, on his execution book, every execution, at the time it issues, noting in separate columns, the names of the parties, the day it issues, the endorsement containing a statement of the debt, damages, interest and costs, and whether replevied or not, the return day, to whom directed, to whom delivered, the officer's return, and the day it is made, at full length, and shall make the like entries on issuing an alias or pluries execution, which book and the entries therein, made as aforesaid, shall be taken as matters of record.

SEC. 56. It shall be the duty of the president of each circuit, once in every year, to examine each clerk's office in his circuit, and report to the court in writing, the situation of the books and papers, which report shall be spread upon the order book.

SEC. 57. That in every leap year the twenty-eighth and Leap year twenty-ninth days of February shall be considered in law as one day.

Jeofails.

Each day's
proceedings
shall be drawn
up at full
length.

Execution
book.

President ex-
amine clerks'
offices.

CHAPTER LXXV.

An Act authorizing the Printing of sundry Private Acts by their titles, and reprinting sundry Statutes, and for other purposes.

APPROVED, JANUARY 31, 1824.

Private acts to
be printed by
their titles.

Titles.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That his excellency, the governor, be and he is hereby required, to cause to be printed by their title, and date of approval only, amongst the statutes of this general assembly, sundry private acts, which are now in force in this state, and such printing by the title and date of approval, shall continue such private acts in force, and make them a part of the statutes of this general assembly; which said private acts, so to be printed by their title and date of approval only, are the following, to wit:

An act for the relief of the administratrix and administrators of Nathaniel Scribner, deceased.—Approved, January 1, 1820.

An act authorizing Jane Dubois executrix, and William Jones, and Touissant Dubois, executors of Touissant Dubois, deceased, to sell and convey certain lands.—Approved, December 31, 1818.

An act authorizing Davis Floyd, assignee of Harvey Heth, deceased, to record the balance of the plat of the town of Corydon.—Approved, December 31, 1818.

An act authorizing the trustees of the town of Hartford, to dispose of certain property for the benefit of a public seminary in said town.—Approved, December 31, 1818.

An act for the relief of Abigail Dickerson, administratrix of Ebenezer Dickerson, deceased.—Approved, December 31, 1818.

An act to authorize the sale of a certain tract of land, belonging to the estate of Asaph Chandler.—Approved, January 1, 1819.

An act to revive an act entitled, "an act incorporating the Roman Catholic Church in Vincennes."—Approved, January 1, 1819.

An act authorizing Thomas Hempstead, guardian of William Henry Vanderburgh, to convey ten acres of land, as guardian, to Francis Vigo.—Approved, January 1, 1819.

An act for the benefit of the heirs of James Marrs, deceased.—Approved, January 11, 1820.

An act for the benefit of the heirs of the late Andrew Fulton, deceased.—Approved, January 7, 1820.

An act for the benefit of certain lessees.—Approved, January 18, 1820.

An act authorizing the guardians of Francis V. M'Kee, and Archibald M'Kee, minor children of the late Doctor Samuel M'Kee, deceased, to sell a certain portion of the estate of said deceased.—Approved, January 20, 1820.

An act to authorize the administrators of Richard M. Heth, deceased, to sell a portion of the estate of said deceased.—Approved, January 21, 1820.

An act for the benefit of the heirs of the late William Jones, deceased.—Approved, January 22, 1820.

An act for the relief of the administrators of the estate of John M'Merty and Tubby Bloyd.—Approved, January 3, 1821.

An act for the relief of Thomas M'Cartney, David Harmon and Peter Weaver.—Approved, January 8, 1821.

An act for the benefit of the surviving heir of John Smith.—Approved, January 5, 1821.

An act authorizing John McDonald and William M'Cartney, to erect mills on Fall creek at the falls thereof.—Approved, December 31, 1821.

An act authorizing Rebecca Heth and Fielding M. Bradford, administrators of Harvey Heth, deceased, to sell and convey certain lots, &c.—Approved, December 30, 1816.

An act supplementary to an act, authorizing Rebecca Heth and Fielding M. Bradford, administrators of Harvey Heth, deceased, to sell and convey certain lots, &c.—Approved, December 11, 1821.

An act to authorize Richard M. Heth and Jonathan Wright, guardians of the infant heirs of Richard M'Mahan, deceased, to lay out certain monies belonging to said heirs, in the purchase of lands.—Approved, December 24, 1816.

An act authorizing William Hurst, guardian of the minor heirs of John Morgan, deceased, to purchase land for said minors.—Approved, January 2, 1817.

An act authorizing Jane Dubois, executrix, and William Jones and Touissant Dubois, executors of Touissant Dubois, deceased, to convey a certain house and lot, or parcel of ground in the Borough of Vincennes, and for other purposes.—Approved, January 28, 1818.

An act authorizing the administrators of the estate of John Francis Hamtramck, deceased, to sell certain lands for the benefit of his creditors, heirs and representatives.—Approved, September 15, 1807.

An act for the relief of the heirs and representatives of Samuel Ewing, deceased.—Approved, December 10, 1810.

An act for the benefit of the heirs of the late John Fencher, deceased.—Approved, January 10, 1823.

An act to authorize David Stewart, administrator, and Lucinda Wyman, administratrix of the estate of George Wyman, deceased, to sell certain real estate.—Approved, January 8, 1823.

An act authorizing the executors of the last will and testament of Andrew Brooks, deceased, to sell and convey certain lands therein named.—Approved, January 8, 1823.

Printing.

An act to authorize Jesse Upton to build a mill-dam across Anderson's river.—*Approved, January 8, 1823.*

An act to authorize the agent of state, to sell two additional brick yards at the town of Indianapolis.—*Approved, January 11, 1823.*

An act to incorporate a public seminary at Aurora, in the county of Dearborn.—*Approved, January 9, 1823.*

An act authorizing the agent of Indianapolis, to lease a ferry, and for other purposes.—*Approved, January 3, 1822.*

An act authorizing John Fishlie, to keep a ferry below and adjoining the town of Jeffersonville.—*Approved, January 2, 1822.*

An act for the relief of George White, upon the subject of a ferry.—*Not approved.*

An act to provide for the sale of the seminary township in Gibson county, and for other purposes.—*Approved, January 2, 1822.*

An act to revive the act, entitled "An act to incorporate the Corydon seminary."—*Approved, December 27, 1816.*

An act authorizing the citizens of towns, to vacate said towns, or any part thereof, and for other purposes.—*Approved, January 14, 1820.*

An act establishing the permanent seat of justice for the county of Wayne, and for other purposes.—*Approved, December 26, 1820.*

An act incorporating the WalnutRidge Library Company, in the county of Washington.—*Approved, December 24, 1816.*

An act concerning the town of Jeffersonville.—*Approved, September 14, 1807.*

An act to amend an act regulating the town of Jeffersonville.—*Approved, December 31, 1813.*

An act to change the plan of the town of Jeffersonville.—*Approved, January 3, 1817.*

An act to revive, and amend an act, entitled, "An act to incorporate the Indiana Church," approved the 7th December 1810.—*Approved, January 22, 1818.*

An act authorizing Morgan Eaton and William Ledgerwood to build a bridge across Bussereau creek.—*Approved, January 29, 1818.*

An act to authorize the proprietors of land in the Lower and Cathlenettes Prairies in the county of Knox, to enclose the same, and for other purposes.—*Approved, January 29, 1818.*

An act to regulate the enclosing and cultivating of common fields.—*Approved, September 17, 1807.*

An act to incorporate the borough of Vincennes.—*Approved, September 6, 1814.*

An act to amend the act, entitled "an act to incorporate

Printing.

the borough of Vincennes.—*Approved, December 26, 1815.*

An act to incorporate an university in the Indiana Territory.—*Approved, September 17, 1807.*

An act to incorporate the Vincennes Library Company.—*Approved, September 17, 1807.*

An act to revive and amend an act, entitled "an act to incorporate the Vincennes Library Company.—*Approved, February 15, 1813.*

An act to incorporate the Wabash Baptist Church.—*Approved, September 16, 1807.*

An act to authorize the boundary line of Clark county to be surveyed.—*Approved, January 22, 1820.*

An act to authorize the proprietors of lands in the Lower prairie, in the county of Knox, to enclose the same, and for other purposes.—*Approved, September 17, 1807.*

An act supplementary to an act, entitled an act, to authorize the proprietors of land in the Lower prairie, in the county of Knox, to enclose the same, and for other purposes.—*Approved, October 24, 1808.*

An act to incorporate the New Hope Baptist Church, on Deer creek, in the county of Dearborn.—*Approved, December 7, 1810.*

An act supplemental to an act, entitled "an act authorizing the laying off certain state roads in this state, and appropriating \$100,000 of the fund, commonly called the three per cent fund, for opening the same, approved, December 31, 1821.—*Approved, January 11, 1823.*

An act to relocate a part of the state road, leading from Mount Prospect on the Ohio river, to Pittsburgh.—*Approved, January 8, 1823.*

An act to alter the state road from Winchester to Indianapolis.—*Approved, January 10, 1823.*

An act to revive and continue in force an act, entitled "an act locating certain permanent roads therein named, and for other purposes," approved, January 22, 1820, and the several acts amendatory thereto.—*Approved, January 10, 1823.*

An act to relocate so much of the state road, leading from the Ohio line through Brookville to Indianapolis, as lies between that point, to which the said road is opened, and Indianapolis.—*Approved, January 10, 1823.*

An act to establish a state road from Terre Haute to Fort Wayne.—*Approved, January 11, 1823.*

An act extending the limits of the corporation of the town of Rising Sun, in the county of Dearborn.—*Approved, January 18, 1820.*

An act locating certain permanent roads therein named, and for other purposes.—*Approved, January 22, 1820.*

An act supplemental to an act, locating certain roads

therein named, and for other purposes, approved, January 22, 1820.—Approved, January 9, 1821.

An act giving further privileges to the freemen of the town of Lawrenceburgh in the county of Dearborn.—Approved, December 31, 1822.

An act to amend an act for the incorporation of the town of Lawrenceburgh, Dearborn county, passed 26th December, 1815.—Approved, January 20, 1820.

An act appointing commissioners to select and locate a site for the permanent seat of government of Indiana—Approved, January 11, 1820.

An act appointing commissioners to lay off a town on the site selected for the permanent seat of government.—Approved, January 6, 1821.

An act legalizing the acts and proceedings of the commissioners appointed by the last general assembly, to lay off a town on the site selected for the permanent seat of government; and to legalize the report and allowances made and signed by Christopher Harrison, one of the said commissioners.—Approved, November 28, 1821.

An act relating to the navigation of the river Wabash.—Approved, January 2, 1822.

An act authorizing Tabitha Armstrong, administratrix, and Henry Morton, administrator of the estate of John Armstrong, deceased, to sell and convey certain lots, &c.—Approved, January 21, 1818.

An act for the relief of the county agent of Pike county.—Approved, January 2, 1822.

An act to continue in force, an act entitled an act supplemental to an act, locating certain roads therein named, and for other purposes, approved January 9, 1821.—Approved, January 2, 1822.

An act to establish a permanent road from Leavenworth to Terre-Haute.—Approved, January 2, 1822.

An act authorizing the laying off certain state roads in this state, and appropriating one hundred thousand dollars of the fund commonly called the three per cent. fund, for opening the said roads.—Approved, December 31, 1821.

An act authorizing the state agent, to rent out the improved lands on the donation at Indianapolis, and for other purposes.—Approved, January 10, 1823.

An act for the relief of such persons, as have suffered or may hereafter suffer by the destruction of the records of the county of Knox, which was consumed by fire at Vincennes in the year 1814.—Approved, September 7, 1814.

An act to revive an act entitled an act for the relief of such persons, as have suffered or may hereafter suffer by the destruction of the records of the county of Knox, which was consumed by fire at Vincennes in the year one thou-

sand eight hundred and fourteen, approved, September 7, 1814.—Approved, January 22, 1820.

An act to incorporate the Jeffersonville Ohio canal company.—Approved, January 28, 1818.

An act to amend an act, entitled "an act to incorporate the Jeffersonville Ohio canal company."—Approved, December 23, 1819.

An act authorizing the subscription of a certain number of shares, to the capital stock of the Jeffersonville Ohio canal company.—Approved, January 22, 1820.

A joint resolution of the general assembly of the state of Indiana.—Approved, January 11, 1820.

A joint resolution authorizing the governor to draw a part of the three per cent. fund.—Approved, January 22, 1820.

An act for the better regulation of the town of Corydon.—Approved, January 5, 1821.

An act for the apportionment of senators and representatives, in the counties therein named.—Approved, January 10, 1823.

An act to authorize Polly Mosely, sole administratrix of the estate of Enos Mosely, deceased, to sell the real estate of said deceased.—Approved, January 9, 1823.

An act authorizing the location of the seat of justice in the county of Putnam.—Approved, January 7, 1823.

An act to revive and continue in force an act, entitled "an act to establish a permanent road from Fredonia or Levenworth, to Terre-Haute, approved January 2, 1822."—Approved, January 11, 1823.

An act to authorize the governor to rent such buildings in the town of Corydon, as may be necessary for his accommodation.—Approved, January 11, 1823.

An act to render the proceedings upon writs of mandamus and informations in the nature of quo warranto more speedy and effectual.—Approved, January 21, 1820.

An act supplementary to an act, entitled, "an act to authorize the proprietors of land in the Lower prairie, in the county of Knox, to enclose the same, and for other purposes."—Approved, October 24, 1808.

An act to amend an act, entitled "an act to authorize the proprietors of lands in the Lower prairie, to enclose the same, and the act supplementary thereto."—Approved, December 7, 1810.

An act supplementary to the act, entitled "an act for authorizing the proprietors of lands in the Lower prairie, to enclose the same."—Approved, December 10, 1810.

An act for improving the navigation of White Water.—Approved, February 16, 1813.

An act for the benefit of Edmund Hogan and Thomas Neily.—Approved, December 16, 1813.

An act authorizing John Conner to erect a mill dam across White River at the Horse Shoe Bend.—Approved, December 26, 1822.

An act giving the citizens of Indianapolis, a public burying ground.—Approved, December 31, 1822.

An act to add the lots lately laid out by General William Henry Harrison, to the borough of Vincennes.—Approved, January 3, 1817.

An act to vacate a part of the town of Lawrenceburgh.—Approved, December 31, 1818.

An act to incorporate Madison Academy.—Approved, January 11, 1820.

An act supplementary to the act, entitled "an act to incorporate Madison Academy," approved, January 11, 1820.—Approved, January 2, 1821.

An act appointing commissioners to lay out a state road from Lawrenceburgh, through Rising Sun and Vevay, to Madison.—Approved, December 31, 1822.

An act to provide for the altering of state roads and for other purposes.—Approved, January 9, 1823.

An act changing a part of the state road, located from Mauk's ferry to Indianapolis, and for other purposes.—Approved, January 8, 1823.

An act to establish a state road from Aurora, in the county of Dearborn, to Napoleon, in the county of Ripley, and certain other roads therein named.—Approved, January 6, 1823.

An act to establish certain state roads therein named.—Approved, January 10, 1823.

An act to relocate certain state roads therein named.—Approved, January 11, 1823.

An act to relocate a part of the state road from Evansville to Terre Haute.—Approved, January 11, 1823.

An act for the regulation of the town of Centreville.—Approved, December 26, 1815.

An act for the relocation of the seat of justice of Union county.—Approved, December 21, 1822.

An act to relocate the seat of justice of Floyd county.—Approved, January 10, 1823.

An act appointing commissioners to relocate the seat of justice of Scott county, and for other purposes.—Approved, January 10, 1823.

An act to authorize the agent of the county of Fayette to sell certain public ground in the town of Connerville, in the said county of Fayette.—Approved, December 26, 1822.

An act for the regulation of the town of Salem, in Washington county.—Approved, September 6, 1814.

An act to incorporate the Literary Society of Vevay—Approved, August 31, 1814.

An act to incorporate the Trustees of the Seminary of Vevay.—Approved, December 26, 1815.

An act to incorporate the Farmers' and Mechanics' bank of Indiana.—Approved, September 6, 1814.

An act to authorize the administrators of Simpson Charlton, deceased, to reassign the certificate of certain real estate, for the benefit of the heirs of said deceased.—Approved, January 9, 1823.

An act for the benefit of the improvers of unsold town lots in the town of Indianapolis.—Approved, January 10, 1823.

An act for the relief of Westill S. Calkins, and for other purposes.—Approved, January 10, 1823.

An act authorizing the guardians of the infant heirs of Heary Hecky, deceased, to lay out certain monies.—Approved, January 3, 1822.

An act to legalize the proceedings of the Franklin and Union circuit courts, relative to the partition of certain real estate, among the heirs of Thomas Harper, deceased.—Approved, January 11, 1823.

An act incorporating New-Albany School.—Approved, January 8, 1821.

An act for incorporating the Indiana Cotton Manufacturing Company.—Approved, January 9, 1821.

An act for the relief of James K. Scott, and others.—Approved, January 5, 1821.

An act to provide for the erection of a house for the employment of the poor of Knox county.—Approved, January 9, 1821.

An act appointing commissioners to relocate the seat of justice of Crawford county, and for other purposes.—Approved, December 24, 1821.

An act to provide for the running the county line between the counties of Clark and Jefferson.—Approved, January 8, 1817.

Sec. 2. And his excellency, the governor be, and he is hereby required to cause to be printed at full length, amongst the statutes of this general assembly, all the following statutes which are now in force in this state; and such printing shall continue the same in force, and make them a part of the statutes of this general assembly; which said statutes are the following, to wit:

An act for the prevention of frauds and perjuries.

An act to regulate general elections.

An act to regulate descents.

An act authorizing aliens and foreigners to hold real estate within the state of Indiana.

An act for the relief of occupying claimants of land.

An act against forcible entry and detainer.

An act defining the duties of recorders, and pointing out the mode of conveying real estate.

*Statutes to be
printed at full
length.*

Their titles.

Printing.

An act to prohibit the wearing of concealed weapons.
 An act concerning insane persons.
 An act for the relief of securities of persons charged with criminal offences.
 An act to improve the breed of horses.
 An act concerning salt petre caves, and for other purposes.
 An act for the safe keeping of prisoners committed under the authority of the United States into any of the jails of this state, and for other purposes.
 An act providing for the support of illegitimate children.
 An act making promissory notes, bonds, and inland bills of exchange, negotiable and assignable.
 An act concerning joint rights and obligations.
 An act regulating damages, on protested bills of exchange.
 An act regulating the interest of money in the state of Indiana.
 An act respecting apprentices.
 An act defining and regulating privileges in certain cases.
 An act declaring what laws shall be in force.
 An act for rendering authentic as evidence in the courts of this state, the public acts, records, and judicial proceeding of courts of the United States.
 An act authorizing and regulating arbitrations.
 An act concerning vagrants.
 An act regulating weights and measures.
 An act regulating enclosures.
 An act concerning trespassing animals.
 An act concerning the stock of non-residents, running at large in this state.
 An act providing for running and marking the line, dividing the states of Indiana and Illinois.
 Joint resolution confirming the line between the states of Indiana and Illinois.
 An act authorizing the establishment of fire companies.
 A joint resolution providing for an interchange of statute laws with the several states of the Union.
 An act to prevent trespassing by cutting of timber.
 An act for the incorporation of public libraries.
 An act for recording town plats.
 An act for the encouragement of religion and learning.
 An act authorizing the writ of replevin.
 An act establishing the office of attorney general, and providing for the appointment of such officer.
 An act to regulate the inspection of tobacco.
 An act providing for the collection of certain debts due the state.
 An act concerning the auditor of public accounts and the treasurer of state.
 An act providing for a public seal and press.

Prisoners Safe Keeping of.

An act to provide for carrying the laws into effect in new counties, (leaving out the sixth section.)

An act fixing the salaries of certain officers, and for other purposes.

SEC. 3. All statutes and parts of statutes which have not been passed or adopted by the present general assembly, and which have not by this act been ordered to be reprinted, either by their titles, or at full length, be and the same are hereby repealed: *Provided*, that such repeal shall not affect any act done, right accrued or established, proceeding had, or prosecution commenced, or penalty, forfeiture, or crime incurred or committed, previous to the taking effect of the several statutes of this session of the general assembly; but every such act, proceeding and right, shall remain as valid, and every such suit or prosecution, may lawfully proceed, and every such offence, penalty or crime be demanded, prosecuted or recovered, or punished as the case may be, as if all the statutes and parts of statutes hereby repealed, had remained in full force: *And Provided also*, such repeal shall not be so construed, as to require the appointment, or reappointment of any officer, unless such as may become vacant, according to the laws under which they were at first appointed; and then and in that case, the same shall be filled according to law.

SEC. 4. All the printing ordered to be done, by the provisions of this act, shall be paid for at the same time and rate, that the other printing done for this general assembly may and shall be paid for.

This act shall take effect and be in force from and after its passage.

CHAPTER LXXVI.

An Act for the safe keeping of prisoners, committed under the authority of the United States, into any of the jails of this state, and for other purposes.

[APPROVED, JANUARY 26, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That it shall be the duty of the keeper of every jail, in every county within this state, to receive into his custody, any prisoner or prisoners, who may be from time to time, committed to his charge, under the authority of the United States, and to safe keep every such prisoner or prisoners, according to the warrant or precept of commitment, until he or they shall be discharged by the due course of the laws of the United States.

Prisons and Prison Bounds.

Penalty for
neglect of du-
ty.

U. S. to sup-
port criminals

Jailor to re-
ceive prison-
ers from the
marshal of the
district.

Federal Dis-
trict court,
where to be
helden.

SEC. 2. The keeper of every jail aforesaid, shall be subject to the same pains and penalties, for every neglect or failure of duty herein, as he would be subject to by the laws of this state, for the like neglect or failure in the case of a prisoner committed under the authority of the said laws.

SEC. 3. *Provided always,* that the United States do pay or cause to be paid for the use and keeping of such jails, at the rate of fifty cents per month for each prisoner that shall under their authority be committed thereto, during the time such prisoner shall be therein confined, and moreover do support such of the said prisoners as shall be committed for offences.

SEC. 4. That the marshal for the court of the United States, within this state, shall have a right to use any county prison within this state, for the imprisonment of any one in his custody, by legal writ or process, in the same manner as the sheriffs of the respective counties have a right to use such prisons; and all jailors and keepers of jails within this state, are hereby directed to receive and keep such prisoners, delivered them by the marshal or his authorized deputy, in the same manner as if the prisoner were delivered him by the sheriff of the county in which his jail is fixed: *Provided however,* that all charges for keeping and feeding, and other incidents, shall be made by such jailor against the marshal, and not against the county.

SEC. 5. *And be it further enacted,* That the judge of the district court for the Indiana District, shall have permission, and is hereby authorized, to hold the sessions of the said court in the court room that is used by the supreme court of this state for the same purpose.

CHAPTER LXXVII.

An Act regulating Prisons and Prison Bounds.

[APPROVED, DECEMBER 22, 1823.]

Circuit courts
lay off prison
bounds.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the several circuit courts shall lay off and designate by metes and bounds, around and adjoining each county jail, a certain determinate space of land, to be called and termed Prison Bounds; which shall not extend, in any direction from said jail, more than six hundred yards; and such bounds so fixed and assigned, shall be recorded amongst the records of said court, a copy of which shall be delivered to the jailor, to be by him fixed up, in some conspicuous place in the debtors room, for the government of

Prisons and Prison Bounds.

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such of them, as shall be entitled to the benefit of such prison bounds.

SEC. 2. Every person imprisoned for debt, either on mesne process or execution, shall be permitted and allowed the privileges and benefit of the prison bounds; but in no instance to pass over, or without said limits; but such prisoner, before he or she shall be entitled to such privileges, shall give bond with security, living within the county, to the creditor or creditors, in double the sum for which such prisoner stands committed, conditioned, that from and after the execution of such bond, he will continue a true prisoner, in the custody of the jailor or prison keeper, and within the limits of the said prison bounds, without attempting any manner of escape, until discharged by law; and the sheriff shall be liable for the solvency of the bail; but for a breach of the condition of said bond, the sheriff shall not be liable; but shall, when demanded by the creditor mentioned in the bond, deliver the same over to such creditor or creditors, who may commence suit thereon, against the obligors of the same.

SEC. 3. If any action or suit shall be brought or instituted, against any sheriff or jailor, for any manner of escape, committed by any prisoner allowed the benefit and privileges of prison bounds, having first given bond, as is by this law required, such sheriff or jailor shall have the liberty of pleading the general issue, and of giving this act in evidence.

SEC. 4. If any person who may be committed for debt shall violently escape from prison, without the connivance of the sheriff or keeper, and the sheriff, jailor or prison keeper, shall within three months next after such escape, recover the prisoner so escaped, and recommit him to prison, then and in that case, the sheriff shall be liable to nothing further than the costs of such action or actions, as may have been commenced against him, for such escape.

SEC. 5. All warrants, mittimuses, writs and instruments of writing of every kind, or the attested copies of them, by which any prisoner may be committed, enlarged or liberated, shall be safely kept (regularly filed in their order of time,) in a suitable box, for that purpose provided by the keeper of the jail, under the direction of the sheriff; and upon the death or removal of any sheriff, the box with the contents thereof shall be delivered to his successor in office, under a penalty not exceeding five hundred dollars, to be paid by the sheriff so removed, or his executors or administrators, in case of the death of the sheriff, to be recovered by any person who shall prosecute therefor to effect in any court having jurisdiction.

SEC. 6. It shall be the duty of the circuit courts, at the beginning of every term, to direct the grand jury to inquire Grand jury to

Who entitled
to prison
bounds.

Bond.
Condition
thereof.

Sheriff liable,
&c.

This act giv-
en in evidence
in actions of
escape.

Recaption of
prisoners.

Process, how
kept by the
jailor.

examine the prison.

Separate rooms for the sexes.

Compensation for keeping prisoners, how made.

into the state of the prison in their respective counties, both with regard to the sufficiency of such prison, and the condition and accommodation of the prisoners; and said courts shall from time to time, take such legal measures, as may best tend to secure the prisoners from escape, sickness and infection, and to have the jails cleansed from filth and vermin.

SEC. 7. The sheriff shall keep separate rooms for the sexes, except where they are lawfully married, and be responsible that his jailor at all times provides proper meat and drink, for all prisoners committed to the jail of his proper county, if such prisoners have no other convenient way of supplying themselves with provisions, which shall always pass to them through the keeper's hands; and in every case where the sheriff or jailor shall be at the expense of furnishing meat, drink, or fire-wood to a prisoner in jail for a crime, or at the suit of the state, who is not of ability in point of property, to repay or indemnify such sheriff or jailor, their reasonable expense and charges, for supplying such prisoner or prisoners, in every such case, the sheriff or jailor shall make out his account therefor, and on oath shall testify to the truth of the same, before any justice of the peace or judge of the circuit court, of the proper county, and on the receipt of such certificate, the commissioners of said county shall audit the same; but in all civil cases, where the defendant is unable to pay the prison fees, the same shall be taxed up by the sheriff against the plaintiff, which shall be recovered in the same manner as other costs; but nothing herein contained shall be so construed, as to prevent the prison fees being taxed up in favour of such plaintiff, and made a part of his costs against such defendant or defendants, after he shall be liberated from confinement.

CHAPTER LXXVIII.

An Act defining and regulating Privileges in certain cases.

[APPROVED, DECEMBER 31, 1817.]

Privilege of members and officers of the general assembly.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the members of the general assembly of the state of Indiana, and the secretaries, clerks, sergeant-at-arms, door-keepers and messengers of either branch of the general assembly of this state, shall be privileged from arrest during the sitting of the legislature or either branch thereof to which they respectively belong, and also during the time, necessarily employed in travelling to and returning

from the place of their meeting, allowing one day for every twenty-five miles of the distance of the road most usually travelled; and all proceedings in suits pending, in which either of the persons above mentioned is a party, shall be stayed during the time aforesaid; and whoever shall arrest either of the persons above mentioned, during the time they are entitled to privilege as above provided, shall forfeit and pay for every such offence, the sum of one hundred dollars, to be recovered with costs of suit, by action of debt, for the use and in the name of the person injured; and all persons ^{Of electors.} legally entitled to vote for representatives to the general assembly, shall be privileged from arrest during the time of their attendance at elections, and while on the way of going to and returning from such elections.

SEC. 2. The judges and clerk of the supreme court shall be privileged from arrest while attending on the court and during the space of fifteen days next before the commencement, and for the space of ten days next after the close of any term thereof.

SEC. 3. The judges of the several circuit courts within this state, during the sitting of their respective courts, and during the space of forty-eight hours next before the commencement, and during the like space next after the close of any term thereof, and each member of the board of county commissioners for the space of forty-eight hours before any of their regular and legal sessions, during the time employed in said session, and for forty-eight hours after the close thereof, and the justices of the peace, while engaged in hearing and determining any action, suit or plaint, instituted before them or either of them, and all attorneys and counsellors at law, clerks, sheriffs, coroners and criers, and all suitors, witnesses and jurors; while attending court, and while going to and returning from court, shall be privileged from arrest.

SEC. 4. No person shall be arrested while doing militia duty under the order of his commanding officer, or while going to or returning from the place of duty or parade, nor shall any person be arrested on the first day of the week, commonly called Sunday, nor in any place of religious worship, during the performance of divine service, or in the chamber of the legislative body of this state during their sitting, or in any court of justice during the sitting of the court, or on the fourth day of the month of July, the anniversary of American independence: *Provided however,* nothing in this act contained, shall be so construed as to prevent any person from arrest, if he shall disturb or molest any religious congregation in worship, or any individual thereof.

SEC. 5. Nothing herein contained shall be so construed as to extend to cases of treason, felony or breach of the peace: *Provided always,* that where either of the members or officers of the general assembly, shall be arrested during

^{Of judges and clerk of supreme court.}

^{Of judges of circuit court and county com'rs.}

^{Of suitors, witnesses and jurors.}

^{Of the militia.}

^{Proviso.}

^{Criminals not embraced in this act.}

^{Proviso, rela-}

ting to the general assembly during its session, &c.

When summons may be served.

Person illegally arrested, how discharged.

the sitting of the legislature, upon any charge of treason, felony or breach of the peace, it shall be the duty of the person issuing the process on which the arrest is made, forthwith to give written notice thereof to the house in which the person arrested shall be a member, addressed to the president or speaker as the case may be.

SEC. 6. Nothing herein contained shall be construed to privilege any person herein named from being served any time, Sundays and the fourth of July excepted, with a summons or notice to appear. And all arrests, not contrary to the provisions herein contained, made in any place, on any water course or river within or bounding on this state shall be deemed lawful. And if any person shall be arrested, contrary to the provisions herein contained, such person may and shall be discharged by a writ of habeas corpus or in a summary way, by motion before the court from which the process shall have issued, at the cost of the party suing out such process.

All acts or parts of acts, heretofore in force on the foregoing subject, are hereby repealed.

CHAPTER LXXIX.

An Act providing for the settlement of Decedents' Estates, and for other purposes.

[APPROVED, JANUARY 26, 1824.]

Jurisdiction of the c. court in the settlement of decedents' estates.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That in matters relating to the probate of wills and testaments, granting letters testamentary, and letters of administration, the settlement and distribution of decedents' estates, the protection of minors, lunatics and idiots and the security of their estates, and in the trusts, rights and interests arising from the relations of guardian and ward, the equity side of the several circuit courts shall have jurisdiction, in as full and ample a manner, as are allowed said courts in other cases, belonging peculiarly to their cognizance.

Executor to make oath & give bond.

SEC. 2. That said courts, in granting letters testamentary, shall, before the delivery thereof to the executor, require him to make oath, that he will well, truly and faithfully perform the duties required of him, as such executor by law, and give bond, with good freehold security to be approved by the court, in double the estimated amount of the estate of the decedent entrusted to his control, conditioned that he will truly and faithfully perform, the duties and trusts committed to him, as such executor according to law; and whenever letters of administration are applied for to any circuit court upon evidence to be exhibited to them,

that all the executors of any last will or testament have refused to accept the trust, or have deceased, or that there is no appointment by the will or testament of any executor, or that the person alleged to be deceased, or his executor died intestate, or that from the decease of the person, who had been invested with the control of a decedent's estate, or other disqualifying cause, such estate is left without a legal representative, the same shall be granted upon the compliance of the person who may be entitled thereto, on his taking the like oath and entering into the like bond, except using the distinctive addition of administrator, as above provided in the case of an executor.

SEC. 3. That whenever an administrator is appointed under this act, and there be a last will and testament of the decedent, of whose estate, he is thus invested, such will or testament shall be annexed to such administration, and such administrator shall be bound by its directions and instructions; and if after the granting of any letters of administration, any last will or testament of the decedent should be discovered, the said letters of administration shall be revoked, if there be an executor appointed by such will or testament, who will accept and qualify under this act, and if there be none such, said will or testament shall be annexed to the said letters of administration, and the same shall be binding on such administrator.

SEC. 4. That during the vacations, between the terms of the circuit courts, the clerks thereof may take the proof of last wills and testaments, grant letters testamentary and letters of administration, under the provisions of this act, subject to be revoked at the discretion of the court, at the next term thereafter; and whenever any person shall file with the clerk of any circuit court, a notice prior to the proving any will or testament, or granting any letters testamentary, or letters of administration, that such person has an interest in the estate of the decedent, as widow, next of kin, or creditor, and that the expected proceeding will be contested, if the expected application be made, the clerk shall enter and continue the same, until the next term of the court for their determination, and in no case, shall the proof of a will or testament be taken, nor letters testamentary or letters of administration be granted, until the lapse of fifteen days after the decease of the testator or intestate, to be proved before the clerk or court taking such proof or making such grant, but administration pending a suit under this act may be granted at the discretion of the proper court or officer.

SEC. 5. That the taking any proof of a will or testament, or the granting any letters of administration or letters testamentary, shall be had in the circuit court of the county, in which the decedent resided, at the time of his decease, and if he had no permanent residence in the county where

When executors may refuse to serve or none are appointed, administration to be granted to next of kin.

Administrators to take the oath and give the bond required of executors.

Administrator with the will annexed, how to proceed.

Letters of administration revoked on discovery of will appointing executors.

Clerks of the circuit court to take proof of wills, &c. in vacation.

In case of contest, application to be continued.

No proceedings to be had till 15 days after the death of testator.

Adm'r pending suit, when appointed.

Will to be proved, &c. where decedent resided,

or estate was
situate.

Powers vested
in ex'rs and
adm'rs.

Widow, next
of kin, credi-
tor, &c. to
have prefer-
ence in grant-
ing adm'n.

Letters testa-
mentary or of
administra-
tion, to be re-
voked in case
security be not
given,

or become in-
solvent, &c.

unless further
security be gi-
ven.

he deceased or wherein the principal portion of his estate was situated or deposited; and from the granting of letters testamentary or of administration, the executor or administrator shall be invested with the rights and powers of the decedent he represents, subject to the limitations of law on account of the trust, to all the goods, chattels, rights, credits, monies and effects of the decedent wheresoever the same may be within this state, and shall have right by the proper action, to recover the same in whose possession soever the same may be, and damages for their waste, injury or detention, and such right shall, in all cases, have relation back to the period of the decedent's death, so as to include all trespasses after the decease of the testator or intestate, and such executor or administrator shall also have actions of account, trespass and on the case, for goods and chattels of the testator or intestate, injured, carried away or detained in his life time.

SEC. 6. That in cases of contested rights to grants of letters of administration, the widow and next of kin of the intestate, or some of them, creditors and other proper persons, shall have preference in the order here mentioned, and from those, in equal degree, the court may select to whom they will make the grant, always taking into consideration the integrity and abilities of the applicants.

SEC. 7. That in case any executor or administrator shall fail to give the security required of him by this act, within such time, as the court making the order for a grant of letters testamentary, or of administration, shall allow, such order shall be revoked and another appointment of such trust made, under the provisions of this act; and if, at any time, the securities of any executor or administrator shall die, remove, or become insolvent, or from other causes, the estate entrusted to such executor or administrator shall be in danger of being wasted, without probability of his securities sufficiency and liability to answer for such waste to the creditors, heirs, legatees, or devisees, the said court shall have power to revoke such trust, upon the prayer of any person interested therein, and regrant the same, as herein before provided, unless such executor or administrator shall give such further and sufficient security as the court may require, and on such revocation the successor in such trust, may by suit upon his bond to be instituted, have decree for an account against such former executor or administrator and his securities, of and concerning the goods, chattels, monies, and effects belonging to the estate of the testator or intestate, and for the payment and delivery over to the plaintiff, of what may be found upon such accounting, to belong to him on account of said trust, and if the security of any executor or administrator shall complain to the circuit court, that such executor or administrator abuses the trust repos-

ed in him, by waste of the estate committed to his charge, or other illegal acts, or that he has or is likely to become insolvent, and such security thereby endangered, the said court shall have authority to inquire thereof, and revoke such executor's or administrator's powers, and vest the same in said security or any other proper person, under the provisions herein before contained.

Ex'r or adm'r
abusing his
trust, to be re-
moved.

SEC. 8. That within three months after their appointment, the executor or administrator shall give notice of the same, by publication in a public newspaper printed in the county, if there be such, and if not, in a newspaper most convenient thereto, and declare whether the estate intrusted to him be probably solvent or not, and shall also, within the same time, make a full and perfect inventory of the personal estate, goods, chattels, rights, credits, monies, and effects, of the testator or intestate, so far as they may have come to his knowledge, and shall thereafter from time to time, make further inventories, as the knowledge of further of the personal estate of the decedent shall be obtained, and such inventories to be taken with the assistance of two respectable freeholders, of his neighbourhood, who shall be sworn to appraise all goods and chattels proper to be appraised, shall be returned to the clerk of the circuit court, verified by the affidavits of the executor or administrator, and appraisers, and shall by such clerk be filed among the records in his office.

Notice of the
appointment
of exec'or or
adm'r, how
given.

Inventory to
be made.

Appraisement
to be made by
two freehold-
ers,

and filed in
the clerk's of-
fice.

SEC. 9. That the executor or administrator shall, as soon as practicable, after filing an inventory, proceed, after giving three weeks notice thereof, by publication in a newspaper printed and published in his county, if there be such, and by notice at three of the most public places in the township where the sale is to be made, to sell at public auction the goods and chattels of his testator or intestate, on credits of at least three months, where the amount purchased exceeds three dollars, and as often as after inventories are made, like sales shall be made of the goods and chattels contained therein, and shall require of the purchasers, notes or bonds with security for the payment thereof, according to the conditions of the sale, and for the value of such sales, an account of which to be filed with the clerk of the court, he shall be liable.

Personal
goods of de-
cedent to be sold

SEC. 10. That it shall be the duty of any executor, or administrator, as soon as he discovers, that the personal estate of his testator or intestate, is insufficient to pay the debts, to take an inventory of the real estate and have the same appraised in like manner, as is provided in the case of the personal estate, and file the same in the circuit court as aforesaid, and upon his suggestion or upon the suggestion of a creditor or creditors of the estate, that the personal estate of said decedent is not sufficient to pay the debts of said de-

When per-
sonal
goods is in-
sufficient, real
estate to be
inventoried.

If heirs &c.
cannot shew
good cause,
real estate to
be sold.

Additional
bond, when
given.

Court to ap-
prove sales &
order convey-
ance.

Insolvent es-
tates, how dis-
posed of.

No action to
be brought
against ex'r or
adm'r till one
year after the
taking outlet-
ters, &c.

Notice to be
given to ex'r
or adm'r of
claim on de-
cedent's es-
tate, or claim-
ant to be post-
poned.

Ex'r or adm'r
not liable,
without no-
tice.

How claims
on decedents'
estates are to
be paid.

cedent, and the matters aforesaid are truly and substantially stated, the heirs or devisees of the testator or intestate shall be summoned, and if they cannot shew good cause, why the said real estate or part thereof shall not be sold, the court shall decree that the whole, or so much thereof, as may be necessary to supply the deficiency of the personal estate, shall be sold by such executor or administrator, after his giving additional bond with security as aforesaid, under such restrictions, as the court may deem necessary, for the security of all persons interested therein, and no conveyance shall be made upon such sales, until the same be approved by the court, and their order for the conveyance be made.

SEC. 11. That when the executor or administrator shall discover, that the personal and real estate together, will not discharge the debts and other demands against it, he shall give public notice thereof, by publication in a newspaper printed and published in the county, or, if there be none, in one in the most convenient county thereto, declaring such estate insolvent, and claiming the settlement thereof as an insolvent estate, and shall also give like notice thereof by advertisement at the court house door of such county, and the executor or administrator may, upon like application, have like decree to sell the real estate of an insolvent decedent, as is provided in the tenth section of this act.

SEC. 12. That no actions shall be brought against any executor or administrator, until the lapse of one year, after the taking out the letters testamentary or letters of administration for any demand against the estate of the testator or intestate, and in the mean time, all creditors of such estate shall give notice in writing of their claims, describing succinctly the nature and amount thereof, against such estate; and any creditor failing to give such notice shall claim no preference on account of the superior dignity of his demand, nor shall any executor or administrator be made answerable out of his own estate for such demand, on account of having paid a debt of inferior dignity before he had notice thereof, but such demand shall not be defeated nor postponed, if, when notice be given as aforesaid, there be assets of the estate out of which the same or part thereof ought to be paid.

SEC. 13. That executors and administrators, in making payments of the demands against the estates of their testators and intestates, shall pay in the order following, to wit: funeral expenses, expenses of last sickness, officers' fees, judgments and debts of record, debts evidenced by obligations or other instruments in writing, open accounts; and if any executor or administrator has reason to believe, that any demand whatever exhibited to him for payment is untrue, or that the same has been paid, or that he will be en-

dangered, by making payment thereof without judicial proof, of being made liable to answer the amount thereof, out of his own estate to the creditors, heirs or legatees of his testator's or intestate's estate, he may require of the holder or holders of any and all such demands, to file such claim or a succinct statement thereof, in the circuit court of the county, in which the executor or administrator took out the letters testamentary or letters of administration, and allege the nonpayment or nonperformance thereof; and if such executor or administrator will enter his appearance thereto as defendant, and plead to the same, proof of and concerning the matters in question, shall be taken either by deposition on reasonable notice of time and place, or *viva voce* before the court, or a master in chancery, as the court may direct or the parties agree, and if such executor or administrator demand, such claimant shall answer on oath and make discovery of and concerning his claim, and the court upon their hearing of such claim upon the merits, or upon the report of the master in chancery concerning the same, shall pass such decree, as shall be just, according to equity and the law of the land, and sundry claims of the description above mentioned may be included in one proceeding against such executor or administrator, and sundry decrees passed thereon, and such decrees and orders, concerning the costs in such proceedings, may be passed by such court, as are just, according to the usages of courts of equity; and from any final decree, appeal or error shall lie to the supreme court, as in other cases; and decrees passed upon such proceedings, shall, if had with good faith and without fraud, be conclusive evidence in favour of any executor or administrator, in any suit brought against him, upon questions respecting the assets of his testator or intestate arising therein.

SEC. 14. That whenever any executor or administrator shall declare, that the estate of his testator or intestate is insolvent, as hereinbefore mentioned, no suit shall be brought or sustained against him, provided that within sixty days after such declaration, he file his complaint in the court, by whose authority he was invested with the trust aforesaid, setting forth clearly and succinctly, the condition of the estate, both real and personal, and the probable value thereof, and the amount of debts, so far as they have come to his knowledge, and praying generally for relief, and upon filing such complaint, he shall with due diligence give notice thereof to all known creditors of such estate, if within the jurisdiction of such court, and publish in some newspaper printed and published in his county, if there be such, and if there be none, in any other most convenient, notice of the pendency of such complaint, and that all creditors, who do not come in and present their claims, before the determination of the court thereon, shall be postponed, and the court

Disputed
claims, how
settled.

Executor, &c.
may require
claimant to
answer on
oath.

From final de-
cree, appeal
or error allow-
ed to supreme
court.

Decree con-
clusive, unless
obtained by
fraud.

Mode of pro-
ceeding when
estate is de-
clared insol-
vent.

Complaint to
be filed in
court,
setting forth
debts, credits,
&c.

Notice to be
given to
known credi-
tors,

that unless
they come in,
their claims
will be post-
poned.

On proof of notice, commissioners to be appointed; who shall give notice of their times of meeting, &c. To report their decisions on claims; which if not excepted to, to be final.

Mode of distributing insolvent estates

Special liens first paid.

Creditor not exhibiting claim, barred.

Sales of real estate confirmed by the court, to extinguish liens not specially excepted, if owner of such lien be made party.

Distribution to be made after one year,

according to the will if any,

at the first term, after proof of the notice aforesaid having been duly served and published, being exhibited to them, by the complainant, shall appoint two masters in chancery or two commissioners, who shall investigate all claims exhibited against such estate, from time to time, giving notice of the times and places of their sittings, by leaving the same in the clerk's office, or in such manner as the court shall direct, and after hearing the legal testimony, which may be brought before them, shall report their decisions thereon, and such decisions shall, on filing the same with the clerk, unless excepted to under such rules as the court may establish, be made the decrees of the court; and the court after decisions have been made on all the claims, which shall be exhibited within the time, which they may deem it expedient to fix, and after the real and personal estate shall have been sold under the proceedings, and the amount of the proceeds thereof, after deducting the costs and charges of the proceedings are ascertained, shall proceed to decree a distribution of the fund to each creditor entitled under the proceedings, in proportion to the amount of his adjusted claim, without regard to the dignity thereof, except, that the funeral expenses, the charges of the administration, and the expenses of the decedent's last sickness, shall be first entirely satisfied, and also if any special lien upon any of the decedent's estate exist, by virtue of a contract in favour of any creditor, such lien shall also be first satisfied and discharged, so far as the property thereby bound will discharge the value or amount of the contract, before distribution be made; and if a balance remain of the debt or demand, for which such lien was contracted, the said creditor shall be entitled for such balance in the said distribution in common with the other creditors, and any creditor failing to exhibit his claim, before the final decree for distribution be made, shall be precluded from any share in the distribution.

SEC. 15. That whenever sales of real estate shall be made, under a decree of the court, pursuant to this act, and confirmed by the court, all liens, not specially excepted by such decree, made or suffered by the testator or intestate, shall be extinguished thereby, provided that the owner of such lien be made party to the proceedings, or fail to make himself party after the notice aforesaid, or, if he be a non-resident, fail to apply to the court to open the proceeding aforesaid, within one year after passing the decree.

SEC. 16. That after the lapse of one year, after the taking out the letters testamentary, or letters of administration, and after the payment of all creditors, and the charges and expenses of administration, distribution may be made, of the residue of the personal estate by the executor or administrator, according to the provisions of the last will and testament of the decedent, or if there be none, according to

the act entitled "an act to regulate descents," and the executors or administrator may have the widow and heirs or legatees summoned, to answer in the circuit court, of and concerning such distribution; or the widow, heirs or legatees may file either a joint or several complaint in such court, claiming their several shares, and demanding that such executor or administrator answer thereto; and in passing decrees thereon, the court shall require those, who may have been advanced by the testator or intestate by settlements or portions, or parts thereof, in his life time, if claim be made by them, in the distribution, to answer as to the value of such portion or advancement, and such portions or advancements, shall be included in the distribution, and each claimant be decreed to have his portion of the whole, according to his right under the act aforesaid.

SEC. 17. That no suit against any executor or administrator shall be stayed or prevented, on occasion of this act, after the lapse of the year aforesaid, unless the estate be declared insolvent, as aforesaid; when six months further time shall be given such executor or administrator, unless the court, for good cause, grant an order for such stay or prevention, which shall not exceed at one time more than three months.

SEC. 18. That no payment shall be made to any person, in the character of widow, legatee or heir, by any executor or administrator, unless bond be filed by such person with security to be approved of by the court, to refund the amount, which may be paid such person under a decree of the court, or a ratable proportion thereof, to any creditor, who shall within two years thereafter shew himself entitled thereto; and any such creditor, may in a prosecution for his demand, under this provision, include all persons, who have received any residue of the estate paid over as aforesaid, and whether such suit be joint or several, the decree shall be against each defendant for a proportion of the amount, by such defendant received, ratable with the other defendants and persons liable to refund.

SEC. 19. That in all cases of estates without heirs, and no devise of the estate be made, the executor or administrator shall make sale of all the real and personal estate, in like manner, as herein before provided; and after payment of the charges of administration, and all other debts, such executor or administrator, shall deposit the residue of the monies in the state treasury, taking the treasurer's receipt therefor; and the treasurer shall credit, on a book to be kept by him for that purpose, the estate of the decedent, with the amount; and if any person, at any time thereafter, shall prove himself, upon complaint to be by him exhibited in the court, from which the authority of the executor or administrator of such estate emanated, entitled thereto, the

if not by the
act to regu-
late descents.²
Widow and
heirs, &c. may
be summonsed
to answer con-
cerning distri-
bution,
or may file
complaint for
their shares.
Portion or ad-
vancement, to
be estimated
in making dis-
tribution.

Executors &c.
may be pro-
ceeded a-
gainst after
one year, un-
less estate be
insolvent,
or good cause
be shewn for
further time.

Widow, heirs,
&c. to give
bond and se-
curity to re-
fund to credi-
tors within 2
years.

Mode of pro-
ceeding al-
lowed to such
creditors.

The proceeds
of estates
without heir,
&c. to be paid
into state
treasury.

Treasurer to
credit the es-
tate of deceas-
ed with the
amount,

and pay the same to the person entitled.

Portion of non-resident legatee or heir to be deposited in state treasury.

Executor &c. guilty of fraud or negligence, how proceeded against.

Creditors may file joint bill, &c.

Fraudulent devisees, grantees, &c. decreed to account.

What denominated waste.

Who executors de son tort.

Their liability

How proceeded against.

court shall decree to that effect; and upon such person exhibiting to the state treasurer, a transcript of the record of such decree, the treasurer shall pay the amount of the monies so deposited, to such person, out of any monies in the treasury not otherwise appropriated; and the portion of any known legatee, or heir of any testator or intestate, who may be resident out of the United States, at the time of closing the settlement of such estate, by the distribution aforesaid, shall be in like manner deposited with the state treasurer, by the executor or administrator, and shall be accounted for, as aforesaid, upon proof as aforesaid, in said court, by the person claiming to be such heir or legatee, of his identity.

SEC. 20. That whenever any executor or administrator shall be guilty of fraud, negligence or other mal-administration of the estate entrusted to him, so that thereby the assets of such estate are in danger of being lost or diminished in value, or in cases of a fraudulent devise, or transfer of his estate, either real or personal, or choses in action, in his life time, by the testator or intestate, with intent to defeat creditors, such creditors, or one or more of them, for the benefit of all the creditors, who will exhibit their demands and contribute to the expense under such proceeding, may file their bill of complaint in equity, making such executor or administrator the debtors of such estate, the fraudulent grantees, devisees and assignees, and all persons against whom it will be proper to render a decree, defendants thereto; and the court upon final hearing thereof, shall decree such relief to the complainant and all parties concerned therein, as is consistent with the provisions of this act, and the usages and principles recognized by courts of equity.

SEC. 21. That any mal-administration by an executor or administrator, of the assets of his testator or intestate, by which the same are lost or rendered less valuable, or are diverted to the injury of any creditor or person entitled in the course of distribution, shall be denominated waste, and such executor or administrator, and his securities, shall be liable to answer out of their own estates, to the person or persons injured by such waste.

SEC. 22. That if any person shall unlawfully intermeddle with, or embezzle any of the goods, chattels, rights, credits, monies or effects of a decedent, such person shall be chargeable as executor of his own wrong, and be liable to the action of the creditor, or other person injured, to the value of the injury thereby occasioned; and such person may be required, in any proceeding against him therefor, to answer, and discovery on his oath make, of and concerning such intermeddling or embezzlement, and all things re-

lating thereto; and the court on the hearing thereof, shall adjudge according to the right.

SEC. 23. That any executor or administrator may be authorized, by the circuit court, to compound any claim of the estate of his testator or intestate, against any insolvent person or estate, in such manner, as will be most beneficial to the estate of such testator or intestate: and no executor or administrator shall be bound to commence suit against such insolvent person, or estate, if he doubt that no part of the claim can be recovered; provided he file such claim in the clerk's office of the court, by whose authority he was invested with the trust of executor or administrator aforesaid, for the benefit of such of the creditors, heirs, or devisees of the estate of his testator or intestate, as will prosecute therefor; and the creditors in such case shall have preference, and suit for such claim may be carried on, in the name of the person or persons for whose use it is prosecuted.

SEC. 24. That when an execution against the executor or administrator, to be levied of the goods and chattels of his testator or intestate, shall be returned that no such goods or chattels can be found, the plaintiff may bring suit upon such executor's or administrator's bond, against him and his securities, and suggest therein, that such executor or administrator has wasted the assets of his testator or intestate, with which he ought to have paid and satisfied his demand, and may in such suit require such executor or administrator and his securities to answer on oath, and discovery make of and concerning the assets and administration of such estate, and the court shall upon the hearing of such cause, adjudge according to the legal and equitable right; but no mispleading, or lack of pleading of any executor or administrator, in the suit upon the judgment, on which such execution as above mentioned issued, shall render him liable beyond the amount of assets, for which he ought to account, nor shall any judgment by default, nil dicit, non sum informatus, or confession, preclude him from defence, by shewing that he has fully administered, unless in the suit, upon which such judgment was had, it be averred, that such executor or administrator had wasted the assets of the estate, with which he ought to have paid or satisfied such debt or demand.

SEC. 25. That whenever the plaintiff in a judgment against an executor or administrator, shall have execution thereon returned, that there is no goods and chattels of the testator or intestate out of which the judgment could be levied, such plaintiff may have a scire facias, upon such judgment, against the executor or administrator, and may therein suggest waste of the assets of the estate of his testator or intestate, and such further proceedings and judgment

Executor &c. may compound claims

Need not commence suit against insolvents.

Claims not prosecuted, to be filed for the benefit of creditors, &c.

When ex'r or adm'r may be sued on his bond.

Waste to be suggested.

Executor &c. compelled to answer on oath

Not liable personally for mispleading, &c.

unless waste be averred.

If execution be returned 'no goods,' &c. plaintiff may in scire facias suggest waste by ex'r.

shall be had thereon, as in an action of debt suggesting a waste of such assets.

How real estate may be sold on judgment against ex'r, &c.

SEC. 26. That no real estate of any testator or intestate, shall be subject to execution upon any judgment against any executor or administrator, unless the heirs, devisees, and terre tenants be first made parties thereto, by scire facias, nor shall such real estate be subjected to sale, in any proceeding, unless the heirs or devisees be made party thereto.

Judgment for assets quando acciderint, how proceeded on.

SEC. 27. That the plaintiff, on a judgment to be levied of the assets of the testator or intestate, when they shall come to the hands of the defendant to be administered, may have a scire facias against the defendant, suggesting that such defendant has acquired or become possessed of such assets since the judgment, and such proceedings shall be had thereon to judgment, as are consistent with law and the rights of the parties. Whenever judgment of assets quando acciderint may have been or shall be rendered, against any executor or administrator, it shall be lawful on the suggestion of a devastavit, for the plaintiff to go into evidence of assets in the hands of such executor or administrator, as well before the said judgment as afterwards.

Wills devising real estate, to be in writing.

SEC. 28. That wills, testaments, and codicils, by which any lands, tenements, or hereditaments, or any interest therein, are to be devised, shall be in writing and signed by the testator, and two credible witnesses, in the presence of the testator, and unless so executed shall be void; and proof thereof, shall be by the oath of one or both of such witnesses, if living, or within the jurisdiction of this state, and, if not, by proof of their or one of their, or the testator's hand writing: and wills, testaments, and codicils devising lands in this state, executed abroad and proved according to the law of the country in which executed, and so duly certified under the seal of the court or officer taking such proof, and the signature of the clerk of such court, or officer taking such proof, and the same authenticated, by the certificate of the presiding judge of such court or the first judge of the county, or district, within which such proof was taken, that the certificate is in due form of law, shall be sufficiently proved to admit the same to record, and be of like force and effect as if taken within this state; and letters testamentary and of administration, granted by the proper authority and authenticated as aforesaid, shall be of like force and effect as the above mentioned probate of wills and testaments, and copies of the wills and testaments, and codicils proved as aforesaid, and of the grant of letters testamentary and letters of administration, authenticated as aforesaid, shall be good and sufficient evidence of the gifts, devises, power, authority, and title therein contained, and the executors and administrators mentioned therein may sustain suits thereon, and do all other acts thereby authorized.

How proved.

Wills executed out of the state, how certified.

Their force & effect.

Authority of executors, &c. appointed out of the state.

zed, upon having the same entered of record in any circuit court in this state, in like manner, and to the like effect, as if the probates and grants aforesaid had been by the proper authority within the jurisdiction of this state.

SEC. 29. That proved wills, testaments and codicils, devising real estate, or an interest therein, shall be admitted to record in like manner, as proved conveyances of real estate, and the records and copies of such records, shall be of like force and effect, as in cases of conveyances, but no lands, tenements or hereditaments shall pass by any will, testament or codicil, to any person or persons devisees in such will, testament or codicil, who shall know of its existence, and have the same in their power or control for the term of three years, unless within that time such person or persons have the same duly proved according to the provisions of this act; but such neglect shall be deemed fraudulent and avoid such devise, and such lands, tenements and hereditaments, shall descend to the heirs of the testator; and all legacies and devises, made by any last will, testament or codicil to a subscribing witness thereto, shall be void, and the property so devised or bequeathed shall go to the heir or residuary legatee or devisee.

SEC. 30. That no nuncupative will, whereby the value of fifty dollars is bequeathed, shall be valid, unless proven by at least two credible witnesses, present at the making thereof, nor unless the testator bid those or some of them present, to bear witness, that such was his will, or to that effect; nor unless the same be made during the last sickness of the testator; nor unless within six days after the making the supposed testament, the substance thereof be committed to writing; but this provision shall not affect a testamentary disposition made by a person at sea, or in actual military service, of his moveables, wages and personal estate, at such time in his possession; and no nuncupative will shall be proved, unless the widow and next of kin have first had reasonable notice by summons.

SEC. 31. That no proof of any will, testament or codicil under the provisions of this act, shall be conclusive upon any person claiming an interest in the estate, either real or personal, thereby devised or bequeathed; but such person may, within seven years thereafter, contest the same, and have the issue of devise, or no devise, bequest or no bequest, tried by a jury of the country; and the court, before whom such trial may be had, shall give judgment upon the finding of the jury according to the right ascertained thereby.

SEC. 32. That the circuit court may appoint guardians of minors, lunatics and idiots, on application made or advice given, for the purpose of protecting their persons and estates; and every guardian shall give bond with freehold se-

Proved wills, &c. when recorded to operate as conveyances.

Wills to be void, unless recorded within three years.

Legacies to a subscribing witness, to be void.

Nuncupative will, when valid.

Exception to sailors, &c.

Probate of will, may be contested within seven years.

Circuit court to appoint guardians; who shall give

Probate.

bond and security.

Take an oath.

Power of guardian.

Guardian to make inventories, &c.

Guardian to account, &c.

Real estate of infant when to be sold.

Sale to be confirmed by the court.

Valuation to be had before sale.

Additional bond given. Condition.

curity, to be approved by the court, with penalty of double the estimated value of the property to be entrusted to his charge, and conditioned for the faithful performance of the duties of the trust reposed in him; and shall likewise be sworn faithfully to perform such trust, before entering upon his duties.

SEC. 33. That every guardian shall have full power to dispose of the personal estate of the infant, lunatic or idiot committed to his charge, for the care, education and sustenance of the infant, and care and sustenance of the idiot or lunatic; and for the general advancement of the estate of the person committed to his charge: and all sales of such personal estate, shall be made, as to the inventory, notice and conditions of sale, as in case of executors and administrators, unless special leave be granted by the court to make other disposition thereof; and such guardian shall be liable to have his authority revoked, and to account to his successor, or to the minor on his coming of age, or to the lunatic on recovering his reason, or to the heirs, devisees, and other legal representatives of such minor, lunatic, or idiot, in like manner, as is provided in the case of executors and administrators, and may, by complaint in the circuit court, enforce any and all persons interested therein, on the determination of his trust, to account and settle with him concerning the same.

SEC. 34. That the circuit court upon the application of any guardian, who may be appointed under the provisions of this act, praying for the sale of any real estate of his ward, if it appears upon such application, that the sale is necessary or proper, either on account of the education, or sustenance of the ward, that the same is sustaining injury, that it is encumbered by a lien, held by an equitable title, upon which the purchase money in part thereof is unpaid, or that it is evidently for the interest of the estate, that it should be sold, the court shall decree the sale of such real estate, or part thereof, and upon such terms, as they deem most advisable, for the interest of the ward, and after the confirmation of any sale, made under the above provisions, by the court, as in case of sales made by executors or administrators, the conveyance shall be made.

SEC. 35. That before any sale shall be decreed, under the above provisions, of any real estate, such estate, shall be valued by three disinterested freeholders, to be appointed by the court, made upon their oath and returned into the court; and the guardian shall likewise give bond with good freehold security, to be approved by such court, in the penalty of double the value of such estate, and conditioned that said guardian shall faithfully apply the monies arising from the sales of such estate, under the direction of said court, and account therefor as may be required according to law.

*Probate.**Probate.*

SEC. 36. That the jurisdiction of the circuit court, shall Jurisdiction of c. court to extend to joint estates where minors are concerned.

Specific direction of will not to be violated.

Money of infants to be put out at interest

Guardian &c. liable for interest, in what cases.

When land may be purchased at congress price.

Inventories, &c. to be filed with clerk.

Widow may select articles at valuation.

When execu- tor shall enter upon real es- tate.

SEC. 37. That the monies of infants, lunatics, and idiots, in the hands of guardians, executors, administrators, and other trustees, shall be loaned out by them, at the highest legal rate of interest, and upon mortgage security, but no loan shall be for longer than three years, nor beyond a minor's coming of age; and if any guardian, executor, administrator, or trustee hold monies of their wards in their hands, they shall severally be liable for the highest legal interest thereon, unless they can clearly shew, that they, by making use of reasonable diligence, have not been enabled to loan such monies: or such monies may be invested, under the direction of the court, in the purchase of lands, at a price not exceeding the minimum price of the lands of the United States, offered for sale within this state.

SEC. 38. That executors, administrators and guardians, shall deposite, from time to time, in the court from which their authority is derived, all inventories, with the valuations, memoranda of sales and other papers containing important transactions in the management of their trusts, and the same shall be filed by the clerk thereof.

SEC. 39. That the widow of any decedent may select at the valuation, as contained in the inventory, to the value of one third of the goods and chattels of such decedent, on giving bond to account therefor, to the creditors and heirs or legatees, if for the payment of debts, or to equalize the residue of the estate, after payment of debts, in its distribution, such accounting should be necessary; and such widow, over and above the privilege aforesaid, may select one hundred dollars in value, of the personal estate, for which she shall not be required to account.

SEC. 40. That the executor or administrator, if there be no heir or devisee present to take possession, may enter upon the real estate of the testator or intestate, as trustee for such heir or devisee, take the rents and profits, and account therefor, either in the payment of the debts of the testator or intestate, or to such heir or devisee, when he shall claim

the same, or, as is herein before provided, by payment into the state treasury.

Official bonds
of ex'rs &c. to
be payable to
the state.

What deemed
a breach of
condition.

Bonds not
void on first
recovery.

Duty of exec-
utors of per-
sons dying
without heirs.
If delinquent,
to be sued by
auditor.

Clerks to for-
ward accounts

Will to be
void on birth
of a child not
provided for.

Special adm'r
when to be
appointed.

SEC. 41. That the official bonds of executors, administrators and guardians, under the provisions of this act, shall be made payable to the state of Indiana; and a violation of any duty required by law of any executor, administrator or guardian, shall be deemed a violation of the condition of his bond, and render him and his securities liable thereon to the party injured for the damages sustained; and one recovery shall not extinguish such bond, but recovery thereon may be had, as often as cause of action against such executor, administrator or guardian accrues, either by action of debt or covenant upon the bond, or by scire facias upon the first judgment obtained thereon; said suits to be in the name of the state, and if for the use of any person or persons besides the state, in the name of the state, on the relation of such person or persons.

SEC. 42. That in cases, where by the defect or absence of heirs or devisees under this act, the monies remaining after the settlement of an estate, ought to come into the state treasury, unless the executor or administrator shall pay the same within ninety days after the year elapsed, or time allowed for such settlement, the auditor of public accounts shall cause suit to be commenced against such executor or administrator and his sureties on their bond, for such default; and the monies aforesaid, when collected, shall be deposited with the treasurer as aforesaid: and in order that information of the situation of such estates be made known to said auditor, the clerks of the several circuit courts shall transmit to him, within thirty days after the time allowed for the settlement of the estates of testators or intestates has elapsed, such account as he may be able to furnish of and concerning the estates of persons deceased without heirs, or the heirs of which are absent as aforesaid.

SEC. 43. If after the making of a last will and testament, a child be born to the testator, and no provision be made in such will for such a contingency, such birth shall operate as an entire revocation of such last will and testament.

SEC. 44. Whenever hereafter any stranger or person not resident of the county, where such person may die, and the next of kin, or person entitled to administration on such deceased person's estate, shall not be present or resident of said county, it shall be the duty of the circuit court, or clerk in vacation, to appoint some respectable freeholder of said county, special administrator to said decedent's estate, who shall, before entering on the duties of his office, take an oath as prescribed by the second section of this act, and also enter into bond with two or more sufficient securities, conditioned for the faithful discharge of his duty, as hereinafter prescribed.

SEC. 45. It shall be the duty of each administrator so appointed, to proceed in the appraisement and sale of such decedent's estate, according to the provisions of the foregoing sections of this act; and as soon as may be, after sale and collection, to pay all the debts of such decedent, which may be due within the county or adjoining counties, the same being first legally proved and established, and hold the residue in his hands ready to pay over to the next of kin, heir, or such other person, as may be found thereunto entitled, without requiring bond, as required in the eighteenth section of this act, reserving to himself a reasonable compensation for his services, to be determined by agreement of the parties, or in case of disagreement, by two justices of the peace of the proper county; and such special administrator, after delivering over to the next of kin, or other person having right to administration on said estate, such part of said estate, as may remain in his hands, after paying How to ac- count. such debts, as may have been by him legally discharged, shall be held, deemed and considered fully discharged from his said administration, and shall not be liable for any actions relative to said estate, except it be for embezzlement, corruption or fraud.

SEC. 46. The judges of the circuit court shall have a right to convene themselves, for the purpose of appointing guardians to minor children, or to perform any other service relative to any decedent's estate, whenever they may deem it necessary, on application of any person concerned or interested therein; the expenses of such special session to be defrayed by the applicant, or out of the estate of the decedent, according as such court may order and determine; the proceedings however, of such special court, shall be subject to the control and correction of the circuit court, at any regular term of their meeting.

SEC. 47. That the several circuit courts shall have discretion to allow to executors, administrators and guardians, their lawful disbursements, on account of the trusts vested in them; and also a reasonable compensation for their services, to be ascertained by estimation of the particulars of the services rendered, to be given in under oath of the truth and correctness thereof.

Judges may
hold special
sessions for
probate busi-
ness.

Court to make
reasonable al-
lowance to
executors, &c.

CHAPTER LXXX.

An Act making Promissory Notes, Bonds and Inland Bills of Exchange, negotiable and assignable.

[APPROVED, JANUARY 29, 1818.]

Be it enacted by the General Assembly of the state of Indiana,
That all notes, bills, bonds or other instruments of writing

What notes, bills, bonds, &c. are assignable.

that shall hereafter be made, or have heretofore been made and signed by any person or persons, body politic or corporate, whereby such person or persons, body politic or corporate, promise to pay any sum of money, or acknowledge any sum of money to be due to any other person or persons, or for the delivery or payment of any specific article, or to convey any property, or perform any condition or conditions therein mentioned, shall be, and the same are hereby made assignable by endorsement thereon, under the hand or hands of such person or persons, body politic or corporate, to whom the same shall have or may be made due or payable, and in his, her or their assignee or assignees, so as absolutely to transfer and vest the property thereof in each and every assignee or assignees successively; and such assignee or sue in his own name.

Action vs. endorser,

Assignee to allow set off before notice to drawer, &c.

Notes payable at a chartered bank, negotiable in like manner as inland bills of exchange.

Proviso.

Assignee may sue in his own name or names, and recover against the person or persons, body politic or corporate, who have or shall make or sign the same, reserving to such drawer or drawers, obligor or obligors, all the equitable defence which he, she or they might or could make, and in the same manner as if the suit had been commenced by and in the name or names of the drawee or drawees, obligee or obligees; and such assignee or assignees may have their action or suit against him, her or them, who endorsed the same; (having used due diligence to obtain the money, article, property or condition from the maker or drawer thereof,) and in every such case, he, she or they so bringing suit, shall be entitled to recover damages and costs, if judgment be rendered in his, her or their favour: *Provided however*, that all such assignee or assignees shall allow all just set-offs, discounts and defence, not only against himself, but against the assignor, before notice of such assignment shall have been given to the defendant: *Provided also*, that all notes in writing negotiable and payable at any chartered bank within this state, made and assigned by any person or persons, body politic or corporate, whereby any such person or persons, body politic or corporate, doth or shall promise to pay to any other person or persons, body politic or corporate, his, her or their order, or unto bearer, any sum of money therein mentioned, shall by virtue thereof, be taken and construed to be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants; and that the payees or endorsees of every such note, payable to them or their order, shall and may maintain their action for such sum of money against the makers and endorsers of the same respectively, in like manner as in cases of inland bills of exchange: *And provided also*, that nothing in this preceding proviso shall be so construed as to affect any promising

that shall hereafter be made, or have heretofore been made and signed by any person or persons, body politic or corporate, whereby such person or persons, body politic or corporate, promise to pay any sum of money, or acknowledge any sum of money to be due to any other person or persons, or for the delivery or payment of any specific article, or to convey any property, or perform any condition or conditions therein mentioned, shall be, and the same are hereby made assignable by endorsement thereon, under the hand or hands of such person or persons, body politic or corporate, to whom the same shall have or may be made due or payable, and in his, her or their assignee or assignees, so as absolutely to transfer and vest the property thereof in each and every assignee or assignees successively; and such assignee or sue in his own name or names, and recover against the person or persons, body politic or corporate, who have or shall make or sign the same, reserving to such drawer or drawers, obligor or obligors, all the equitable defence which he, she or they might or could make, and in the same manner as if the suit had been commenced by and in the name or names of the drawee or drawees, obligee or obligees; and such assignee or assignees may have their action or suit against him, her or them, who endorsed the same; (having used due diligence to obtain the money, article, property or condition from the maker or drawer thereof,) and in every such case, he, she or they so bringing suit, shall be entitled to recover damages and costs, if judgment be rendered in his, her or their favour: *Provided however*, that all such assignee or assignees shall allow all just set-offs, discounts and defence, not only against himself, but against the assignor, before notice of such assignment shall have been given to the defendant: *Provided also*, that all notes in writing negotiable and payable at any chartered bank within this state, made and assigned by any person or persons, body politic or corporate, whereby any such person or persons, body politic or corporate, doth or shall promise to pay to any other person or persons, body politic or corporate, his, her or their order, or unto bearer, any sum of money therein mentioned, shall by virtue thereof, be taken and construed to be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants; and that the payees or endorsees of every such note, payable to them or their order, shall and may maintain their action for such sum of money against the makers and endorsers of the same respectively, in like manner as in cases of inland bills of exchange: *And provided also*, that nothing in this preceding proviso shall be so construed as to affect any promising

Protested Bills of Exchange....Recorders.

sory note, or other writing, unless the same shall be made negotiable and payable in the first instance, at some chartered bank in this state.

CHAPTER LXXXI.

An Act regulating damages on protested Bills of Exchange.

[APPROVED, JANUARY 11, 1820.]

Whereas bills of exchange are accounted in all mercantile transactions as ready money, and it is expedient for the advancement of trade and commerce, that the credit of such bills should be preserved by making the same a sufficient security to the holder, and expedite a recovery thereupon, therefore:

Be it enacted by the General Assembly of the state of Indiana, That when any bill of exchange shall be drawn for the payment of any sum of money, and such bill shall be legally protested for non-acceptance, or non-payment, the drawer or endorser shall be subject to the payment of fifteen per cent. damages thereon, if drawn on any person or persons living without the jurisdiction of the United States; and ten per cent. damages thereon, if drawn on any person or persons residing within the jurisdiction of the United States, and without the jurisdiction of this state; and the bill shall in all cases bear an interest of six per centum per annum, from the date of the protest for non-payment, until the money therein drawn for shall be fully satisfied and paid: *Provided*, nothing herein contained shall be so construed as to entitle any banking company, to any more or greater interest, than at the rate of six per centum per annum on any note which may have been discounted by such bank, and which may afterwards have been protested for non-payment: *Provided also*, that nothing in this act shall be so construed as to subject the drawer or endorser of a bill of exchange to any other damages than the costs of protest for non-acceptance, if the bill of exchange be paid by the drawer when the bill arrives at maturity.

Drawer or endorser of bills of exchange, subject to 15 per cent. damages,

if drawn on persons out of the state.

Bill to bear interest.

Proviso.

Proviso.

CHAPTER LXXXII.

An Act defining the Duties of Recorders, and pointing out the mode of conveying Real Estate.

[APPROVED, JANUARY 21, 1818.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana*, That there shall be an office of record, in each and

Recorder's office, where to be kept.

What terms shall be deemed a conveyance in fee simple.

Penalty for forging or swearing corruptly to deeds transferring real estate.

Payment of mortgage to be entered on record.

Penalty on mortgagee for failing to enter the same.

every county in this state, which shall be called and styled the recorder's office, and shall be kept at some convenient place at the seat of justice, in the respective counties, and the recorders shall duly attend the service of the same, and at the costs and charges of the proper county, shall provide good large books, of royal or other large paper or parchment, well bound and covered, wherein he shall record, in a fair and legible hand, all deeds and conveyances, which shall be brought to him for that purpose, according to the true intent and meaning of this law.

SEC. 2. All deeds to be recorded in pursuance of this law, whereby any estate of inheritance in fee simple, shall hereafter be limited to the grantor and his heirs, the words, grant, bargain, and sell, shall be adjudged an express covenant to the grantee, his heirs and assigns, to wit: That the grantor was seized of an indefeasible estate in fee simple, freed from all incumbrance done or suffered from the grantor, except the rents and services that may be reserved, as also for quiet enjoyment, against the grantor, his heirs and assigns, unless limited by express words contained in such deed, and that the grantee, his heirs, executors, administrators, and assigns, may, in any action, assign breaches, as if such covenants were expressly inserted: *Provided always*, that this law shall not extend to leases at rack rent, or leases not exceeding one and twenty years, when the actual possession goes with the lease.

SEC. 3. If any person shall forge any entry of the acknowledgments, certificates, or endorsements, whereby the freehold or inheritance of any man may be charged, he shall be liable to the penalties against forgers of false deeds; and if any person shall perjure himself in any of the cases hereinabove mentioned, he shall incur the like penalties as if the oath or affirmation had been in any court of record.

SEC. 4. Every mortgagee of any real or personal estate in this state, having received full satisfaction and payment, of all such sum or sums of money, as are really due to him by such mortgage, shall, at the request of the mortgagor, enter satisfaction upon the margin of the record of such mortgage, recorded in said office; which shall forever thereafter, discharge, defeat, and release the same; and shall likewise bar all actions brought, or to be brought thereupon.

SEC. 5. And if such mortgagee, by himself or his attorney, shall not, within three months after request and tender made, of his reasonable charges, repair to said office, and there make acknowledgment as aforesaid, he, she, or they neglecting so to do, shall, for every such offence, forfeit and pay unto the party or parties so aggrieved, any sum not exceeding the mortgage money, to be recovered in any court of record, by presentment or indictment.

SEC. 6. Before any of the recorders enter upon the duties

of their respective offices, they shall become bound to the governor and his successors in office, with one or more sufficient securities, in a bond for two thousand dollars, conditioned for the true and faithful discharge of the duties of his office, and for the delivering up of the records and other writings belonging to the said office, whole, safe, and undefaced, to his successor in said office; which said respective bonds shall be filed in the secretary's office, and there safely kept, in order to be made use of for making satisfaction to the parties that shall be damaged or aggrieved, as is or shall be in such cases directed by law.

SEC. 7. No recorder whomsoever, now or hereafter appointed, shall enter upon or officiate in his said office, before he hath given such security as aforesaid, upon the pain of forfeiting three hundred dollars, one half to the proper county, and the other half to him or them that shall sue for the same, to be recovered as aforesaid.

SEC. 8. All deeds and conveyances which shall be made and executed within this state, of and concerning any lands, tenements, or hereditaments therein, or whereby the same may be in any way affected, in law or equity, shall be acknowledged by one or more of the grantors or bargainers, or proved by one or more of the subscribing witnesses to such deed, before the recorder of the proper county, or one of the judges of the supreme court of this state, or before one of the judges of the circuit courts of this state, or before one of the justices of the peace of the county, where the land conveyed lies, and shall be recorded in the recorder's office of such county, where such lands or hereditaments are lying and being, within twelve months after the execution of such deeds of conveyance; and every such deed of conveyance that shall at any time after the publication hereof, be made and executed, and which shall not be proved and recorded as aforesaid, shall be adjudged fraudulent and void, against any subsequent purchaser or mortgagee, for valuable consideration, unless such deed or conveyance be recorded as aforesaid, before the proving and recording of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim.

SEC. 9. Where the grantors and witnesses of any deed or conveyance are deceased, or cannot be had, it shall and may be lawful to and for the judges of the supreme or circuit court, or any justice of the peace of the county where the lands lie, to take the examination of any witness or witnesses, on oath or affirmation, to prove the hand writing of such deceased witness or witnesses; or where such proof cannot be had, then to prove the hand writing of the grantor or grantors, which shall be certified by the judge or justice before whom such proof shall be made; and such deed

Recorder to give bond.

Penalty for failure thereof

Acknowledgments of deeds before whom made.

Deeds to be recorded within 12 months.

How deeds shall be proved in case of the death of the grantor & witnesses.

Recorders.

or conveyance being so proved, shall be recorded as is usual in other cases, directed above by this law.

Recorder to have respect to priority of time in recording.

To give receipt therefor.

Penalty for neglect of duty.

Husband and wife to join in conveying her interest in real estate.

Wife to be examined apart from her husband.

SEC. 10. Every recorder shall keep a fair book, in which he shall immediately make an entry of every deed or writing brought into his office for recording, mentioning therein the date, the parties and the place, where the lands, tenements and hereditaments, granted or conveyed by the said deed or writing, are situate, dating the same entry on the day on which such deed or writing was brought into his office, and shall record all such deeds and writings, in regular succession, according to their priority or time in being brought into said office, and shall also immediately give a receipt to the person bringing such deed or writing to be recorded, bearing date on the same day with the entry, and containing the abstract aforesaid, for which entry or receipt he shall take or receive no fee or reward whatever; and if any recorder shall record any deed or writing before another, first brought into his office to be recorded, or in any other manner than is herein before directed, or shall directly or indirectly take or receive any fee or reward for such entry and receipt, or either of them, he shall forfeit and pay for every such offence, a sum not exceeding three hundred nor less than one hundred dollars; one half to the use of the proper county, and the other half to the use of him or them that may sue for the same, to be recovered in any court of record by action of debt, bill or plaint, wherein no essoin, wager of law or protection, or more than one imparlance shall be granted.

SEC. 11. Whenever any husband and wife shall hereafter incline to dispose of and convey the estate of the wife, or her right of, in or to any lands, tenements or hereditaments whatsoever, it shall and may be lawful, to and for the said husband and wife, the wife not being less than twenty-one years of age, to make, seal, deliver and execute any grant, bargain and sale, lease, release, feoffment, deed, conveyance or assurance, in the law whatsoever, for the lands, tenements and hereditaments, intended to be by them passed and conveyed, and after such execution, to appear before one of the judges of the supreme or circuit courts of this state, or before some justice of the peace in and for said county, or before such recorder himself, who are hereby authorized and required to take such acknowledgments; in doing of which, he or either of them shall examine the wife, separate and apart from her husband, and shall read or otherwise make known, the full contents of such deed or conveyance, to the said wife; and if upon such separate examination, she shall declare that she did voluntarily and of her own free will and accord, and as her act and deed, seal and deliver the said deed or conveyance, without any coercion or compulsion from her husband, every such deed or conveyance

Records Authenticated.

shall be and the same is hereby declared to be good and valid in law, to all intents and purposes, as if the said wife had been sole and not covert at the time of such sealing and delivering; any law, usage or custom to the contrary in any wise notwithstanding: *Provided*, that the judge, justice or recorder taking the same, shall, under his hand and seal, certify the same upon the back of such deed or conveyance.

SEC. 12. It shall and may be lawful for any judge of the supreme or circuit courts, or any justice of the peace of any county in this state, to take the acknowledgement or proof of the execution of any deeds or conveyances, or release of dower of any lands or tenements lying in any other county in this state; which acknowledgments or proofs, or release, so taken and made, the same being duly certified by the clerk, under the county seal, shall be valid and effectual, and have the force and effect, as if the same were taken before any judge or justice of the peace of the county in which the said lands or tenements are situate.

SEC. 13. All deeds and conveyances, made and executed by any person not residing within this state, and brought hither to be recorded, in the county where the lands lie, the acknowledgement thereof having been taken and made, in manner herein before directed, before any judge or justice of the peace of the proper county, where such deeds or conveyances are or shall be made or executed, and certified under the seal of such county, shall be as valid and effectual in law, as if the same had been made and acknowledged as aforesaid, before any judge of the supreme court, or judge of the circuit court, or the justice of the peace for the county where the lands lie, any thing herein contained to the contrary notwithstanding; and it is hereby made the duty of each and every recorder of any county in this state, to receive the acknowledgments and proofs of deeds and all other instruments of writing offered for record.

All laws and parts of laws on any of the foregoing subjects, heretofore in force in this state, are hereby repealed. This act to be in force from and after its publication.

Acknowledgments of deeds taken in other counties than those in which the lands lie.

Deeds of non-residents, how authenticated

CHAPTER LXXXIII.

An Act for rendering authentic as evidence in the Courts of this State, the Public Acts, Records and Judicial Proceedings of Courts of the United States.

[APPROVED, JANUARY 10, 1818.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That every act of the legislature of any one of the

How legislative acts shall be certified.

United States, or any of the territories of the United States, certified by the secretary, and having the seal of such state or territory affixed thereto, shall be deemed authentic, and receive full faith and credit, when offered in evidence, in any court of justice within this state.

How judicial proceedings shall be certified.

SEC. 2. The records and judicial proceedings of the several courts of or within the United States, or the territories thereof, shall be admitted in the courts of justice in this state, by the attestation or certificate of the clerk or prothonotary and the seal of the court annexed, together with the certificate of the chief justice or one or more of the judges or the presiding magistrate of either such court, as the case may be, that the person who signed such attestation or certificate, was at the time of subscribing it, the clerk or prothonotary of such court, and that such attestation is in due form of law; and the said records and judicial proceedings, authenticated as aforesaid, shall have full faith and credit given to them, in any court within this state, as by law or usage they have in the courts of the United States, or any one of the states or territories, whence the said records are or shall be taken.

SEC. 3. This act to be in force from and after its publication.

CHAPTER LXXXIV.

An Act for the encouragement of Religion and Learning.

[APPROVED, DECEMBER 31, 1818.]

Board of trustees of the Princeton academy to be appointed. SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the board of county commissioners for the county of Gibson, at their spring session, annually and every year, shall appoint three fit persons of said county, as trustees, who, when appointed, shall be called and styled, The Board of Trustees of the Princeton Academy.

Lot No. 1, to be conveyed. SEC. 2. That it shall be lawful for the agent of Gibson county, so soon as the appointment of the trustees hereby provided for shall have been made, to convey to said trustees and their successors, lot number one, in range one in the second survey of lots in the town of Princeton, in the said county of Gibson. That the lot of ground hereby mentioned and directed to be conveyed, shall forever remain and be for the purposes hereinafter mentioned, and for none other, to wit: the building houses of religious worship and seminaries of learning, which houses of worship shall be for the use of all preachers regularly ordained, and in good standing in their respective societies, according to their or-

And for what other purposes.

der. That no society, or other person, with the consent of the trustees or otherwise, shall be permitted to bury their dead upon said lot hereby directed to be conveyed, upon pain of forfeiture of the same to the said county of Gibson.

CHAPTER LXXXV.

An Act authorizing the Writ of Replevin.

[APPROVED, DECEMBER 24, 1821.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the several circuit courts within this state be, and they are hereby invested with jurisdiction to issue writs of replevin in the manner, and in such cases as are herein afterwards prescribed.

SEC. 2. Whenever hereafter any person or persons shall tortiously take, and unjustly and unlawfully detain: or lawfully acquire, and unlawfully and unjustly detain, any of the personal goods and chattels of any other person or persons whomsoever, such person or persons so aggrieved, may replevy his, her or their property so taken and detained as aforesaid.

SEC. 3. Before any person or persons shall be entitled to the benefit of said writ, such person or persons, his, her or their agent or attorney, shall file in the clerk's office from which said writ issues, an affidavit, made before some officer authorized by law to administer oaths, that the goods and chattels which he, she or they wish to replevy, have been tortiously taken, and unjustly and unlawfully detained, or that they were lawfully acquired and unjustly and unlawfully detained (as the case may be) by such defendant or defendants, naming him, her or them, from the plaintiff or plaintiffs, naming him, her or them.

SEC. 4. When such affidavit is made and filed as aforesaid, the clerk in whose office it is deposited, shall forthwith issue a writ of replevin, directed to the proper officer of the county, commanding him to take into his custody the particular goods and chattels described in such affidavit, and them safely keep until said plaintiff or plaintiffs shall well and truly satisfy him by good and sufficient pledges, that he, she or they will well and truly prosecute said writ to effect, and return such goods and chattels, provided a return on the final hearing of the cause, should be adjudged by the court, to the defendant or defendants.

SEC. 5. The sheriff or other officer to whom the aforesaid writ shall be directed, before he delivers the goods and chattels taken by virtue of the same, to the plaintiff or plain-

tiffs in such writ, shall take from him, her or them, a penal bond, in double the amount of the property replevied, with security to the acceptance of said officer, conditioned that he, she or they will well and truly prosecute said writ to effect, and return said goods and chattels on the final hearing of the cause, to the defendant or defendants: Provided, that he, she or they shall be found not guilty of the taking of the said goods and chattels in manner and form aforesaid; and if such defendant or defendants should be found not guilty as aforesaid, it shall be the duty of the sheriff or other officer, taking said bond, at the request of the defendant or defendants to assign the same to him, her or them, who may commence suit thereon, in his, her or their own name or names, when the same becomes forfeited, and thereupon recover the value of the goods and chattels replevied, in damages, together with not less than twenty nor more than fifty per cent. thereon; and if the defendant or defendants be found guilty, the plaintiff or plaintiffs shall be permitted in like manner to recover damages for the detention of such goods and chattels unlawfully, to be determined by the jury that tries the cause.

Defendant not guilty, sheriff shall assign to him the bond.

Pl't failing to give bond, property to be returned to def't

Proceedings upon said writ like those in other cases, double costs excepted.

Privilege not extended to execution defendants.

SEC. 6. After the sheriff or other officer has replevied any goods and chattels by virtue of this act, if the person or persons so replevying the same, shall fail or refuse to give bond within twenty-four hours for the prosecution of said writ to effect, and for a return of said goods and chattels, such officer having the possession thereof, shall immediately thereafter, return said goods and chattels to such defendant or defendants from whom they were taken, and take his, her or their receipt therefor.

SEC. 7. The same proceedings shall be had upon said writ as in other cases, and in such judgment rendered, and execution awarded according to the rules and regulations in other cases of this nature, except that double costs shall not be recovered.

SEC. 8. Nothing herein contained, shall be so construed as to extend the privilege of said writ, to any execution defendant or defendants to replevy property taken by virtue of the same, by any officer of this state.

CHAPTER LXXXVI.

An Act for Assessing and Collecting the Revenue.

[APPROVED, JANUARY 30, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That for the purpose of raising a state revenue,

there shall annually be charged on lands subject to the jurisdiction of this state, except those exempted from taxation by compact with the United States, at and after the rate of one dollar and fifty cents on every hundred acres of first rate land; one dollar on the same quantity of second rate land, and seventy-five cents on the same quantity of third rate land; the rates to be ascertained by the comparative quality of the land in the county in which it is situate, its local advantages from contiguity to towns, navigable waters, or public roads, and by the quality of the greater portion of the tract to be assessed; on every hundred dollars of stock in any bank, twenty-five cents; and on each male inhabitant of full age, sane and not a pauper, fifty cents: and for the purpose of raising a county revenue, there shall be annually charged on every animal of the horse, ass, or mule kind, over three years old, not exceeding thirty-seven and an half cents; on covering horses once the rate at which they stand the season each; on work oxen three years old, not over eighteen and three fourth cents each; on each two wheeled pleasure carriage, one dollar; on each four-wheeled pleasure carriage, one dollar and fifty cents; on each brass clock, one dollar; on each silver or pinch-back watch, twenty-five cents; on each gold watch, one dollar; on each license for retailing spirituous liquors, not less than five nor more than twenty-five dollars; on each license to vend foreign merchandize, not less than ten nor more than fifty dollars; on each ferry, not less than two nor more than twenty dollars; on each original suit or complaint commenced and prosecuted in the circuit courts, fifty cents, to be paid to the clerk of such court, before process against the defendant issues; on every town lot, at and after the rate of fifty cents on the hundred dollars in value, exclusive of improvements; and on lands not exceeding one half the rates provided to be assessed for state purposes. *Provided however, that the county commissioners shall have discretionary power to exonerate any person over the age of sixty years, from paying a poll tax, who is not the owner of any real estate, or on account of bodily disability.*

SEC. 2. That the assessors who may be appointed to list and assess taxes, under the provisions of this act, shall examine the owners of property liable to taxation, touching and concerning the real and personal property, held or possessed by them, either in their own right, or in trust for others; and to administer to such person an oath or affirmation, to answer truly to such questions as the assessor may deem expedient to require of them, of and concerning such property.

SEC. 3. That the first listing, assessment, rating and valuation of real estate, which shall be made under this act, shall not be varied except when corrected, as hereinafter provided, shall not thereaf-

State revenue,
objects of.

County rever-
ue, objects of

Assessors, ad-
minister oath;

to correct mistakes, &c.

Duplicate to be delivered by assessors to their successors.

Assessor's bond.

Listing, to be completed by the first Monday in May.

ter be varied except upon satisfactory evidence of mistakes or omissions exhibited to the proper authority, or changes occasioned by transfers of such property, or the omission of proper distinguishing descriptions thereof on the first assessment, satisfactorily to be explained and proved to the same authority; and upon proof of the circumstances aforesaid, the assessors aforesaid shall, at each new assessment, make the corrections hereby allowed.

SEC. 4. That for the purpose of aiding future assessors in making assessments under this act, the first assessor shall make out, and retain in his possession, a duplicate of his assessment roll, and shall make the necessary corrections and amendments thereof from time to time, so that the same correspond with the assessment roll returned into the clerk's office by him; and when he is succeeded in his office, he shall deliver over the same, together with other documents in his possession relating to the said office, to his successor.

SEC. 5. That the board of county commissioners shall, at their session in February in each year, appoint one suitable person in each township, an assessor, who within ten days after his appointment, of which the clerk of said board shall notify him by summons, directed to the sheriff of the county to be executed, shall enter into bond with security to be approved by said clerk in his office, in the penalty of three hundred dollars, conditioned for the faithful performance of his duties of assessor; and also, take an oath to be administered by such clerk, well, truly, and faithfully to perform the duties aforesaid: or the county commissioners of any county, may, if they deem it advisable, appoint one or more assessors in such county, so as to ensure the proper listing and assessing to be done; and such assessor or assessors shall give bond in such sum as said commissioners may direct, in like manner and with like condition as in case of township assessors; and such assessor or assessors shall be bound by the provisions of this act in discharge of their duties, and shall with the assistance of the clerk and attorney, hereinafter mentioned, have their assessment rolls corrected, amended, and completed, as is provided in case of township assessors; and such assessor shall receive such exemptions and further allowance as the commissioners shall deem reasonable, in like manner, as is provided in the case of township officers.

SEC. 6. That immediately after said appointment and qualification, each assessor shall commence the listing and assessing the persons and property subject to taxation within his township, district, or county, as the case may be, and shall by the first Monday in May thereafter, have completed a full and complete assessment roll of persons, lands, and chattels taxable within his township, which roll shall contain the names of the persons chargeable in alphabetical or-

der, the descriptions, of the lands and lots or other property specifically charged with tax, and the amount of property taxable at valuation; which valuation shall be estimated by said assessor with the aid of two discreet persons, whom he is hereby authorized to call to his assistance; and in listing lands and town lots, the said assessor shall distinguish lands by the number of acres and other descriptions thereof, to be obtained from the original surveys, as laid down on the maps or plans of such surveys—and town lots by the description thereof, as laid down on the maps or plans of such towns, or by the boundaries of such lots and tracts of land, if no other specific descriptions can be obtained; and all tracts and lots of land, of which no specific description is furnished to the assessor by the owner or claimant, shall be listed by the assessor by their least subdivisions, as known and distinguished on the maps or surveys deposited or of record in any public office, or which are generally recognized as containing a correct representation of the same, by their numbers or other specific description, and as the property of persons unknown, and non-resident.

SEC. 7. That on the first Monday of May aforesaid, the assessors of the several townships in each county, either in person or by deputy, shall meet at the clerk's office in their county, and shall publicly, in order that all persons interested therein may have corrections made in what concerns them, compare their several assessment rolls, and correct all double listings, erroneous and imperfect descriptions of lands and lots, or other mistakes in said rolls, and calculate and carry out the amount of taxes; distinguishing between those for state and those for county revenue, opposite to the names of persons or lots and tracts of land charged with tax; and if such assessors require, they may call to their aid in correcting and perfecting said rolls, the county attorney or other counsel; and on any correction or amendment of such rolls, if question arise concerning the same, such question shall be determined by a majority of voices of said assessors; and if any listing of any tract of land or lot, cannot be rendered certain by any correction in its description, such listing shall be rejected from the roll of assessment, and the assessor of the proper township shall within five days thereafter, return to the clerk of the circuit court, a correct description of such lot or tract of land, and such clerk, shall by said last description, amend the listing contained in said roll; and the said assessors on finishing the corrections and amendments herein provided for by them, shall deposit the said assessment rolls with the clerk aforesaid, who shall file the same, and which from such filing shall be taken to be matter of record, and after the time elapsed for further amendment, provided to be made by the clerk aforesaid, the said assessment rolls shall not be altered or amend-

Assessment roll, how made out.

Assessment rolls, how and when corrected.

Revenue.

ed; and if at the meeting of the assessors aforesaid, one or more should fail to attend, their proceedings shall not thereby be stayed—but the roll of the absent assessor when returned, shall be corrected and perfected as aforesaid, by the assistance of the clerk; and such assessor shall be liable under this act, for a violation of his duty.

Persons in possession of real property, pay tax thereon.

Tax a lien till paid.

Lands may be charged with tax of a previous year.

Rates of taxation for county purposes, how fixed.

Clerk transmit to the auditor a certified statement, &c.

Precept to collector.

SEC. 8. That whosoever may be in possession of any real estate, at the time any tax is to be collected, shall be liable to pay the tax charged thereon; and in case any other person by agreement or otherwise, ought to pay such tax or part thereof, the person paying the same, shall by action of debt, recover the amount from the person so bound as aforesaid; and all taxes upon real estate shall be a lien thereon until paid, and have preference of all other charges, and all taxes upon personal estate shall have preference of all other demands.

SEC. 9. That whenever any assessor shall discover, or it shall be made known to him during the period of his making his assessment roll, that there are lots or tracts of land in his township, which were not listed for taxation in the year prior thereto, he shall charge in his roll against the said property, the tax so omitted to be assessed thereon, and such assessment shall have the like force and effect, as if regularly assessed at the proper time.

SEC. 10. That the board of county commissioners, for the purpose of directing the said assessors in the assessing the taxes for county revenue, shall at the time of making the appointment of assessors at their session in February aforesaid, determine under the restrictions of the first section of this act, the rates of taxation severally upon the several subjects allowed to be taxed for the county revenue aforesaid, by the provisions aforesaid, and enter such determination of record; which record or a transcript thereof, shall be furnished by the clerk of the said court to the said assessors on the day of their meeting at his office, as herein before provided, for the purpose of enabling them to make the correction, amendment and completion of their several assessment rolls aforesaid.

SEC. 11. That the clerks of the several courts aforesaid, shall within ten days after the perfection of the said assessment rolls, transmit to the auditor of public accounts, a certified statement of the amount as exhibited by said rolls, of first, second and third rate land in separate items; the number of polls, and the amount assessed on bank stock within their several counties; and within the same time, shall also make out true transcripts of all the rolls aforesaid, and deliver the same, together with a precept in the name of the state, tested by the clerk, under the seal of the circuit court, and directed to the collector of his county, commanding such collector, to collect the taxes charged in said transcript, by

Revenue.

demand of the persons charged therein, by distress and sale of their goods and chattels severally, or by seizure and sale of the lots and tracts of land mentioned in said transcript, according to exigency, and that he pay over the monies collected by him by virtue of said precept, as directed by law, and return such precept with account of his acts thereon to the said clerk, on or before the second Monday of December next ensuing the date thereof.

SEC. 12. That said collector shall on receiving such precept, which he shall demand at the office of such clerk at the expiration of the time limited to said clerk to prepare the same, forthwith give public notice by advertisement in a newspaper printed and published in the county, if there be one, and if not, at the court-house door, and at the usual place of holding elections in each township, that he has the authority aforesaid, and that he will receive taxes at his office at the county seat: And said collector shall proceed to collect all taxes which shall be due and unpaid, by distress and sale of the goods and chattels of the person found upon the tracts or lots of land charged with such unpaid taxes, having given ten days notice to such delinquent of such intended distress and sale, together with the amount of taxes charged to such delinquent. He in all cases when *Sale for taxes*.

a distress by virtue of such precept is to be made, giving six days notice of the time and place thereof, by advertisement in three of the most public places in the township where such sale is to be made, and if no goods and chattels can be found out of which the taxes charged on any lands or lots can be made, the said collector shall seize the tracts or lots of land so charged as aforesaid, by virtue of said precept, and after having given notice thereof by advertisement in a newspaper printed and published in his county, or if none be there printed, in one printed and published in some other county most convenient thereto, and at the court house door, thirty days prior thereto, shall proceed to expose the lots and tracts of land so seized as aforesaid, at the court house, or so much thereof as will pay the taxes charged thereon, and the costs and charges of such seizure, notice, and sale, hereinafter allowed, to the best bidders; such collector declaring at such exposure to sale, in what manner the division of a lot or tract of land shall be made, in case a part thereof shall pay the tax and other charges thereon; and to continue such sales from day to day until all the said lots and tracts have been exposed, upon which the taxes and charges aforesaid remain due; and if after reasonable exposure of such lots and tracts to sale has been made, any remain unsold, and the taxes and charges yet due thereon, the further exposure thereof to sale, shall be adjourned until the next term of the circuit court of such county, when adjourned. *Sale may be*
the same lots shall again be exposed to sale at the same

Taxes unpaid bear interest, and to be collected any future year.

Land sold for taxes, may be redeemed in two years.

Deed.

place, without any further notice; and all lots and tracts of land which shall not be sold as above provided, and the taxes charged thereon yet remain unpaid, shall still remain charged therewith until the taxes and charges due thereon are finally paid, and such taxes and charges from the first Monday in November in the year such taxes were assessed, shall bear interest at the rate of six per centum per annum until paid, and the clerks of the circuit court shall severally, when they make out the transcript of taxes of any future year, annex in such transcript the taxes of any and all former years yet remaining unpaid, together with the charges thereon to the new taxes assessed on such lots or tracts of land, and the same together with the interest, shall be collected by the collector as herein before directed; and when any lot or tract of land, or part thereof shall be sold for the non-payment of the taxes and costs and charges thereon, the said collector shall give to the purchaser of such lot or tract or part thereof, a certificate in writing, describing the same with specific certainty, the sum paid therefor, and the time when the purchaser will be entitled to a deed for such lot or tract or part thereof, and if the owner or claimant of the lot or tract of land described in such certificate, shall not within two years from the date thereof, pay to the purchaser, his heirs or assigns, or to the clerk of the circuit court of the county in which such lot or tract be situate, for the use of such purchaser, his heirs or assigns, the sum mentioned in said certificate, together with interest thereon, at the rate of one hundred per centum per annum, together with such other taxes, costs and charges upon the lot or tract of land sold, as mentioned in said certificate, as may have accrued under the laws of this state, if the same have been paid by the said purchaser, his heirs or assigns, but such taxes, costs, and charges are not to be included, unless vouchers of the payment of the after taxes, costs, and charges, upon said lot or tract of land, be deposited with the said clerk, or produced to such owner or claimant; the said collector or his successor shall, after the expiration of the said two years, execute to the said purchaser, his heirs or assigns, in the name of the state of Indiana, a conveyance of the lot or tract of land so sold as aforesaid, and mentioned in said certificate, which conveyance shall vest in the person, to whom it is given, an absolute estate in fee simple, subject to the claims of the state or county, for all taxes, costs, and charges, accrued upon such lot or tract of land, after such sale as aforesaid, and such conveyance shall be conclusive evidence, that the sale was regular according to the provisions of this act; and every such conveyance to be executed by such collector or his successor, and duly acknowledged before any officer authorized to take acknowledgments of conveyances, may be recorded and have like

force and effect, as other conveyances acknowledged and recorded.

SEC. 13. That any collector of taxes shall, in cases of gross assessment of taxes, upon any lot or tract of land, upon the application of any claimant or owner of any part, either divided or undivided, of such lot or tract, to pay a part of the taxes, interest and charges, due on such lot or tract, proportionate to the quantity of such lot or tract, claimed or owned as aforesaid, receive such proportion, provided the claimant will specify with sufficient certainty to such collector, by a map or plan of such lot or tract, or by a memorandum of the undivided part, or of a survey, which indicates the boundaries thereof, to be delivered to such collector, by such owner or claimant, and the balance of such taxes, interest and charges shall be a lien only on the balance of such lot or tract of land.

SEC. 14. That each collector of taxes shall in his return Collector's return to the precept before mentioned, state fully and perfectly turn to pre- the payment of taxes made by way of credit, to the several cept. persons, and property charged on the transcript of the assessment rolls aforesaid, the payments enforced by distress and sale of goods and chattels in like manner, and the sales of lots and tracts of land or parts thereof, and the persons to whom, and the sums for which the same were so sold, and the taxes remaining unpaid, the legal cause of failure to enforce payment as commanded in said precept, and such other special matters as are provided by this act, to be by him done, and the truth of such return shall be verified by the affidavit of such collector.

SEC. 15. That at any time before sale of goods and chattels or lots or lands, under the provisions of this act, the owner or claimant, may release the same by payment of the taxes, interest and charges, for which the same are liable to seizure and sale; and whenever any balance of the proceeds of any sale of goods and chattels under this act, over and above what is sufficient to pay the taxes, interest and charges, for which the same were sold, remains, the collector shall pay the same over to the owner of such goods and chattels on his demand; and if at any time within two years after any payment of tax, the person who has paid the same, can satisfy the board of county commissioners, that such tax was improperly assessed or paid by mistake, when it was not legally chargeable, the said board shall order that the same be repaid, distinguishing whether it belong to the state or county to refund; and such order shall be a legal debt, against the county or state, and shall be paid by the collector for the county, or by the treasurer of the county or state, according to the nature of the debt; and such collector or treasurer shall be entitled to a credit for the amount thereof, as in cases of payment of other claims.

Joint owner of land, may pay a part of the taxes assessed

Taxes may be paid any time before sale.

After sale, overplus to be paid to owner.

Purchaser failing to pay, the collector may re-expose to sale or bring suit.

Clerk prepare blank forms for assessors.

Collector, how appointed.

State revenue to be paid on or before the second Monday of December.

Certified statement of delinquencies

Quietus.

SEC. 16. That in cases where sales of goods and chattels, lots or lands, are made under the provisions of this act, unless the purchaser shall, within such time as may be allowed by the collector who makes such sale, pay the purchase money, the collector shall again expose the property to sale, or he may at his discretion, sue such purchaser for the amount of the purchase money, and shall recover the same with costs.

SEC. 17. The clerk of the circuit court of each county, shall prepare blank forms of assessment rolls under this act, and deliver one to each of the assessors of his county, at the time of their qualifying, as herein before provided; and whenever the auditor of public accounts shall deem it requisite, he shall transmit to each of the aforesaid clerks, instructions of and concerning said forms.

SEC. 18. The sheriff of each county or any other fit person shall annually, at the time of the appointment of the assessors aforesaid, be appointed collector thereof by the several boards of county commissioners, and such collector shall forthwith take an oath before such board or any officer authorized to administer oaths, well and truly to perform the duties of his office, and shall enter into bond, to be filed with the clerk of said court, with security to be approved of by such board, in the penalty of five thousand dollars, conditioned for the faithful performance of the duties of his office, according to the provisions which are or may be made concerning the same.

SEC. 19. It shall be the duty of the collectors of the several counties to pay over to the state treasurer the amount of the taxes, assessed on their several counties, for the purpose of raising a state revenue, on or before the second Monday of December, in each year, and if there be any deficiency in the amount thereof, he shall account for the same, by the production, to the auditor of public accounts, of a certified statement to be made out by the clerk of the circuit court of his county, under his signature and the seal of said court, of the amount of delinquencies in the non-payment of taxes of such county, as appears from such collector's return to the precept aforesaid, as herein before mentioned; and it is hereby made the duty of said clerk to calculate the amount of such delinquencies, and grant the certificate of the amount as aforesaid; and if the amount of said delinquencies, together with the said treasurer's receipt for the payment aforesaid, will balance the charges on the books of the said auditor, the auditor shall give him a quietus for the amount of such taxes.

SEC. 20. If any collector shall fail to make settlement of the taxes assessed on his county as aforesaid, at the time aforesaid, it shall be the duty of the auditor of public accounts, forthwith to charge in the account against such col-

lector, five per cent damages on the amount or balance. Five per cent, due from such collector, on account of such taxes for such delinquency; and unless the said debt and damages, and the interest thereon, be paid to the treasurer of state, within thirty days after the second Monday in December aforesaid, the auditor shall forthwith, with due diligence, cause suit to be commenced upon such collector's bond, against him and his securities, for the debt and damages due as aforesaid; and said amount shall bear interest from the day at which payment thereof should have been made, at the rate of ten per centum per annum until paid.

SEC. 21. There shall be no continuance of any suit instituted against any collector and his security, under the provisions of this act, when process is returned executed upon any of the defendants, unless by the assent of the attorney prosecuting the same on behalf of the state, and judgment shall be rendered against the defendants upon whom process is executed, and the attorney may elect to proceed by scire facias or summons, against the other defendants and make them parties to said judgment, at any future term of the court in which such suit was instituted; and upon the trial of any such suit, the stated account of the collector, against whom the suit is brought, certified by the auditor of public accounts, as truly transcribed from the account current against such collector, on the books of said auditor's office, authenticated by the state seal, shall be conclusive evidence of the demand against such collector and his securities, nor shall such collector or his securities, be permitted to set-off or allege in payment of such demand, any payment or claim of credit, unless the same has first been presented to the auditor of public accounts, and been allowed or rejected by said auditor, or the same could not, by using due diligence, have been presented to said auditor for his determination thereon to be had before trial of such suit.

SEC. 22. The court before whom such trial shall be had, shall, when the judgment is to be rendered against the defendants, also include in such judgment, six per centum on the amount ascertained to be due the state, besides the usual costs and charges allowed in suits prosecuted on the behalf of the state; which commission shall be for the use of the attorney prosecuting such suit.

SEC. 23. The auditor of public accounts is hereby authorized to employ such attorney or attorneys at law, in the prosecution of suits in behalf of the state, for matters relating to the principal concerns thereof, as he may deem expedient; and that all suits against collectors and their securities, other public officers and their securities, or other persons indebted to the state for debts, penalties, and other demands, shall be commenced in the circuit courts of the coun-

No continuance of suits against collectors.

Statement of auditor, proof against collector.

Six per cent, for prosecuting attorney.

Auditor employ attorney.

ties where the collectors or any of the defendants reside; and the accounts in favour of the state in all cases, upon the trial of suits against all and every person or persons charged on the books of the auditor of public accounts, certified as above provided in the case of collectors, shall in such trials be of like force and effect, and preclude any other defence than is above provided, as before mentioned.

SEC. 24. Whenever the collector of the county revenue, shall fail to pay over the taxes assessed on his county, to the treasurer of such county, on or before the first Monday of January, after his receiving the precept and transcripts of the assessment rolls aforesaid, or account therefor to such treasurer, in the manner provided by this act, in relation to the state revenue, with the auditor of public accounts, the said treasurer shall proceed with due diligence, to commence suit against said collector and his securities, upon said collector's bond in the circuit court of his county; and upon the trial thereof, such collector's return to the precept aforesaid, shall be conclusive evidence; and if judgment ought to be rendered in favour of the said treasurer, against the defendants, the court shall include in such judgment, five per centum damages on the amount due for said taxes, and unpaid on the first Monday of January aforesaid, with six per centum interest on the amount, from the first Monday of January aforesaid, and six per centum on the amount of the judgment for the use of the attorney prosecuting such suit, together with costs and charges, to be taxed as in other cases, and no claim of payment, or set-off shall be allowed on such trial, unless the same be first presented to, and allowed or rejected by the said treasurer.

County revenue to be paid on or before the first Monday of January.

Suit.

Per centum.

Failure of return or false return to precept.

SEC. 25. In case any collector shall fail to make return to the precept aforesaid, as herein before directed, or shall make a false return thereto, the judgment upon the determination of suits, which may be brought either by the auditor of public accounts or the county treasurer, against such collector and his securities, shall be for the full amount severally of the taxes for the state and county revenue, as contained in the transcripts of the assessment rolls aforesaid, together with the damages, commission, costs, and charges, as herein before provided; and of the amount of said taxes, the stated account of the auditor as aforesaid, and the transcript on file in the clerk's office as aforesaid, in the several cases, shall be sufficient evidence.

SEC. 26. If any individual shall be injured or sustain damage by a false return of any collector made to any precept under the provisions of this act, or other illegal or fraudulent act of such collector, such individual upon suit to be brought against such collector and his securities, upon their said bond for the use of such individual, shall recover treble damages and full costs and charges.

SEC. 27. The clerks of the several courts in which the collectors' bonds provided to be executed by this act, shall be filed, shall within thirty days after the filing thereof, transmit a certified copy thereof to the auditor of public accounts, who shall file the same of record in his office, and transcripts thereof, shall in all cases be sufficient evidence of the execution of the same by the obligors therein mentioned; such transcripts being certified as true by said auditor, and his certificate authenticated by the state seal.

Clerks transmit copies of collectors' bonds to auditor.

SEC. 28. If any officer shall neglect or refuse to perform any of the duties imposed on him by this act, he and his securities shall forfeit and pay to the state, not less than fifty dollars nor more than five hundred dollars for each offence, besides all damages which may be sustained by the state or county, or any individual, in consequence of such violation of his duty; the said penalties to be adjudged within the limitations aforesaid, by the court before whom the adjudication shall be had, and to be recovered with costs of suit, in an action to be brought upon the official bond of such officer, and this provision shall be construed to extend to all cases of violations of official duties not otherwise specially provided for by this act; and all frauds and offences against this act, or in the execution thereof, not embraced in any special, or in the above general provisions, shall be considered misdemeanors, and the actors therein, shall be liable on presentment or indictment, for such frauds and offences, to pay such fines as the discretion of the jury who may try the same, shall determine. And if any clerk shall neglect, fail or refuse to forward to the auditor of public accounts, a statement of the amount of first, second and third rate land, the number of polls, and the amount of bank stock assessed in his county, as directed by the eleventh section of this act, or shall fail to forward to the auditor of state, a certified copy of any collector's bond, as directed by the twenty-seventh section of this act, it shall be the duty of the auditor of state, within sixty days after each and every such failure, to cause suit to be brought against such clerk and his securities on the official bond of such clerk for such failure; and on the trial of any such suit, a certified statement of the auditor of state, under his hand and seal, shall be sufficient evidence of such failure; and such failure shall subject such clerk and his securities, to all the penalties of this section of this act, and shall also make such clerk and his securities liable for the whole amount of any such tax, and all costs.

Clerk failing to forward amount of state tax to auditor, &c.

Suit.

SEC. 29. If any assessor appointed under the provisions of this act, shall refuse to accept such appointment, within five days thereafter, he shall forfeit and pay to the county, the sum of twenty-five dollars; to be recovered by action of debt, to be prosecuted by and in the name of the county treasurer; and the clerk of the circuit court shall, upon fail-

Assessor refusing to accept fined.

ure of any assessor to attend at his office and qualify, as herein before directed, issue a summons directed to the commissioners of the proper county, to be served by the sheriff without delay, commanding them forthwith to meet at the court house in said county, and appoint an assessor in the stead of the one so refusing, who shall forthwith appear at the office of said clerk and qualify as herein before provided, and in case any assessor shall die, or become unable from bodily infirmity or any other cause, to complete the assessment of his county, district, or township, as the case may be, according to the provisions of this act, upon information thereof to the clerk aforesaid, a like summons as above mentioned, shall be by him issued; and the like appointment and qualification thereupon made as aforesaid; and such last mentioned assessor, shall demand and receive the assessment roll of his predecessor, of the person in whose possession the same may be, and proceed to complete the assessment of taxable property, according to the provisions of this act, and in case of refusal of such person to deliver such roll, the clerk aforesaid on application of such assessor, shall furnish him with a new form.

Vacancies of
collectors,
how filled.

SEC. 30. If any collector shall decease, or become unable from bodily infirmity, to perform the duties of his office, the clerk shall forthwith appoint a collector, in the place of the one deceased, or infirm as aforesaid, who shall take the oath of office aforesaid before said clerk, and give bond with security to be approved by said clerk, with like penalty and condition as herein before prescribed; and the said collector shall forthwith demand and receive from the person in whose possession the same may be, the precept and transcripts of the assessment rolls aforesaid, and shall forthwith proceed to complete the collections as commanded by said precept; and such collector shall be liable under all the provisions of this act, and for the amount of the assessed taxes of his county, after deducting those which appear by the memoranda of the deceased, or the statements of the infirm collector, to have been collected; and the executors, administrators, heirs, devisees and securities, of any deceased collector, and the infirm collector and his securities, shall be liable under the provisions of this act, for the amount of taxes collected by them severally, unless the same be paid over, as is herein before provided; and any person injured by the neglect of a deceased or infirm collector, to enter credits for taxes paid on the transcripts aforesaid, shall have redress, by action upon such collector's bond, for the damages thereby sustained; and if any person charged with taxes on the transcripts of the deceased or infirm collector, no evidence being furnished to the successor aforesaid, of payment thereof, by or on the part of such collector, deceased or infirm, be able to produce a receipt for such taxes paid such prior col-

lector, the successor aforesaid, shall not be charged therewith, but shall take up such receipt, giving his own in lieu thereof, and return the same with said precept, and the amount thereof shall be recoverable as before provided.

SEC. 31. All bonds directed to be taken by this act, shall be made payable to the state of Indiana; and all suits brought thereon, shall be prosecuted in the name of the state; and if brought for the use or benefit, or by the direction of any person or persons, such suit shall be brought in the name of the state, on the relation of such person or persons; and several rights may be prosecuted in the same suit, on such bond, and one judgment entered upon such bond, shall be no bar to other rights; but the state and any person having right thereto, may have the defendants to such judgment again summoned by scire facias, to shew cause why execution should not be had on such judgment, for the debt or damages suggested to be due, owing or belonging to the party complaining, as often as such right may accrue.

Bonds paya-
ble to the state

SEC. 32. Any collector of taxes shall receive from any individual or individuals, adjusted or audited claims, on his county, in payment of taxes due such county; and adjusted or audited claims or promises of the state, for sums certain and due and payable, in payment of taxes due the state, and in order that claims aforesaid on the county, may be conveniently used in the payment of the tax aforesaid, the holder of any such claim, may have it divided into two or more claims, by application to the clerk of the board of

Collectors
shall receive
audited
claims.

county commissioners, who shall make division thereof, as directed by such holder; and if any collector shall refuse to receive any of the claims before mentioned, in discharge of the tax to which it ought by this section to be applied, he shall be deemed to have violated his duty, and be subject to the operation of the twenty-eighth section of this act; and the treasurers of the several counties, are hereby required to receive the claims aforesaid, in payment from the collectors of their counties severally; and the state treasurer is also required to receive all claims, due as before mentioned by the state, in payment of any debt or demand, due from such collector to the state.

County orders
how divided.

SEC. 33. The boards of county commissioners in the several counties in this state, shall allow to the assessor or assessors in their respective counties, such compensation, as to them shall seem just and reasonable, to be paid out of the county treasury of the proper county, on the order of said commissioners, as other monies are paid.

Assessors, how
paid.

SEC. 34. Each collector shall be entitled to the following fees for his services: Nine per centum on state, and six per centum on county revenue; commission on all sums, paid into the state or county treasuries to be retained by him, in making such payment, and credited therefor in his settle-

Collectors'
fees.

ment with the county treasurer, and auditor of public accounts; two per centum commission, to be charged in his collections of taxes, upon the amount of any taxes not paid him, within the time herein before provided for payment, to be made at his office, and collected together with such taxes from the persons severally owing the same; five per centum commission, in cases where goods are distrained, and taxes, commission, and charges, paid before sale; eight per centum commission on sales of distress, and reasonable charges for keeping property distrained, together with the taxes, and charges, out of the monies received therefrom; on sales of real estate, five per centum on the amount for which the same is exposed to sale; twenty-five cents for each certificate of sale under this act, and the charge for advertising the same; such charge not to exceed twenty-five cents, for each tract; the said several charges and commission, to be added to, and estimated in the sum, for which any lot or tract of land, or part thereof, shall be sold; and fifty cents for making each conveyance, herein before provided for, to be paid by the purchaser, his heirs or assigns.

SEC. 35. Before any collector shall proceed to make any sales of real estate, under the provisions of this act, he shall procure and file in the clerk's office of his county, a verification under oath, of the printer or some person belonging to his office, that the advertisement herein before provided to be made, relating to sales of real estate as aforesaid, a copy of which to be annexed to such verification, has been duly published, the length of time required by this act.

SEC. 36. Each collector shall after the conclusion of the sales of real estate, provided herein before to be made at a certain term of the circuit court of his county, forthwith make return thereof as herein before directed, to the clerk aforesaid; and the same return shall be filed by said clerk, with the precept and first return aforesaid, and be of like force and effect, as said first return; and unless such collector account therfor, within thirty days after such sale, to the county treasurer, and auditor of public accounts as before provided, he shall be subject to like liabilities as aforesaid.

SEC. 37. The value of licenses to retailers of spirituous liquors, and venders of foreign merchandize, shall be determined upon by the board of county commissioners, at any session thereof; and in cases of application to retail spirituous liquors, inquiry shall be made as to the place of residence of the applicant, and the profits of his business, and the board shall after such inquiry, determine what amount such applicant shall pay, for such license, within the limitations of the first section of this act; and such applicant upon the payment of such sum to the county treasurer, and exhibiting his receipt therefor to the clerk of said court, shall receive a li-

Advertisement before
sale, &c.

Return of
sales to be
made to clk's
office.

Retailers.

License,

cense, to be issued by said clerk, under the seal of the circuit court of such county; and in cases of application for license to vend foreign merchandize, the board aforesaid upon examination of the applicant, and others under oath if required, as to the amount of capital by them employed in their business, shall assess the prices of licenses by the following rates: On capitals of one thousand dollars, and under, ten dollars; and in the ratio for every additional thousand dollars of capital, five dollars; and in that proportion, in addition to the said ten dollars: *Provided*, that the price of any license, shall not exceed the sum of fifty dollars aforesaid, such license to issue under the restrictions provided in the case of licenses to retailers of spirituous liquors: and the assessment of taxes on ferries, shall be made by said board, at their session in February aforesaid, the amount thereof to be at their discretion, taking into consideration the annual value thereof; and such assessments to be added by the clerk of the court aforesaid, to the assessment rolls herein before provided, to be taken after their return into his office, to be collected by the collector, as other taxes by virtue of said precept.

SEC. 38. The following real and personal estate shall be exempted from all taxation, to wit: All real and personal property of any literary, benevolent, or religious society or corporation, and the personal property of a widow, and orphan children, if it does not exceed two hundred dollars in value.

SEC. 39. All officers authorized to receive taxes by virtue of this act, shall pay the same over to the state or county treasurer, to whichever they ought so to be paid, at or before the expiration of the times herein provided in the case of collectors, and for failure shall be subject to like liabilities.

SEC. 40. Whenever any collector shall not be able to sell any lots or tracts of land, for the taxes due thereon, he shall be allowed for the expenses of advertising the same, not exceeding the rates herein before mentioned in the settlement with the auditor of public accounts, upon producing to such auditor, a certified statement of the clerk of his county, under the seal of the circuit court, of the number of tracts and lots so unsold as aforesaid, and such charges shall be added to the taxes aforesaid, and collected as before provided in this act.

SEC. 41. It is hereby made the duty of the clerks of the several circuit courts, to extract from the returns of the collectors of their counties, for the year one thousand eight hundred and twenty-two, and twenty-three, a statement of the lots and tracts of land, upon which the taxes of those years appear not to have been paid, and the said taxes charged thereon distinguishing the different years, and those

Property ex-
empted.

Expenses of
advertising
unsold land.

Clerks furnish
extracts from
collectors'
books for the
years 1822 &
'23, and deliver
to collec-
tors.

which were assessed for county, and those for state purposes; and shall annex to such taxes, the charges for advertising such lots and tracts of land; provided the same are furnished by the collector for the proper year, or of record in said clerk's office; such clerk rejecting from such statement, all tracts imperfectly or insufficiently described; and after correcting the same, shall deliver it to the collector at the same time, that he delivers the transcripts of the rolls of assessment, before mentioned, for the year one thousand eight hundred and twenty-four, and in the precept aforesaid, shall direct such collector to collect the same, in like manner as the taxes which may be assessed for the year last aforesaid; and if failure be made in the payment of said taxes, the said collector shall pursue like measures, for the collection thereof, as is herein before provided; and sales of land and lots or parts thereof, for the non-payment of taxes aforesaid, and the deeds to be given therefor as aforesaid, shall be as valid and effectual in law, as herein before enacted.

SEC. 42. If there should be a failure in the arrival at the county seat, of any county, of a copy of this act, by the time of session of the board of county commissioners in such county, in February in the year one thousand eight hundred and twenty-four, it shall be the duty of the clerk of such county, immediately on the arrival of this act at his office, to deliver to the sheriff, a notice for each person composing such board, informing them of the fact aforesaid, and fixing a day, not exceeding six days thereafter, for their meeting at the court house, on such day, to appoint the assessors and collector aforesaid; and upon such notice, the said commissioners shall meet on the day stated therein, and make the appointments aforesaid, as herein before provided; and the same time is given to such assessors, to make out, complete, and perfect their assessment rolls, as if they had been appointed at the fixed time of such appointment: and the clerk aforesaid, shall make out within the time after such assessment is perfected, herein before allowed to make out the same, the transcripts and precept aforesaid; and the collector shall demand the same, at the expiration of such time, from such clerk at his office, and shall proceed thereon to make collections, as herein before provided; and on settlement of his accounts with the auditor of public accounts, and county treasurer, shall be allowed such time, without any forfeiture for delinquency, as he would have had, had his authority for the collection of taxes for the year, come into his hands at the fixed period, as contemplated by the provisions of this act.

Proceedings
where the law
may not ar-
rive before the
Feby term.

Prosecuting
attorney, his
duties.

SEC. 43. It shall be the duty of the prosecuting attorney, to attend to prosecutions concerning the revenue, when required in his county, and to give advice and counsel, of and

concerning the same, when requested by any officer employed in the assessment and collection thereof; and it shall be the duty of all officers, to give information to the grand jury of the proper county, of all frauds and offences, against this act.

Information
to grand jury,
of offences
against this
act.

SEC. 44. All bonds taken with the intention to secure the faithful performance of the duties of any officers, to be appointed or entrusted with the execution of duties, under this act, shall not be void or inefficient, by reason of any imperfection, informality, ambiguity, or misprision therein; but the same shall be construed to be as valid, and effectual in law, as if taken pursuant to the very letter of this act.

Bonds, not
void.

SEC. 45. The board of county commissioners, within and for the several counties, are hereby authorized, if they deem it expedient, to direct their clerk to procure at as early a date as possible, after the taking effect of this act, from the proper land offices, a correct plat, map or statement, of all the lands within their respective counties, not owned by the United States, together with the day of the sale of such lands; exhibiting also on such map, statement or plat, the lands owned by the United States; which said map, plat or statement, shall be paid for by the collector of such county, one half out of the county tax, and the other half out of the state tax; taking proper receipts therefor; and such map, plat or statement, when so procured, shall be carefully and certainly preserved by the clerk of such county, for the benefit of listers, collectors, and others concerned in listing and collecting the state and county revenue, and for the correction of tax lists and duplicate.

Map from the
land office.

This act to take effect and be in force from and after its passage.

CHAPTER LXXXVII.

An Act for opening and repairing Public Roads and Highways.

[APPROVED, JANUARY 31, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That all public roads and highways, established by lawful authority, shall be opened, amended and kept in repair, agreeably to the directions of this act;* and the county commissioners, in their respective counties, shall have authority, upon application, to make and enforce all orders

Commission-
ers may order
roads to be
opened and
repaired,

* SEC. 12. It shall be the duty of the commissioners of the several counties, through which the said roads or any other road, laid out by the authority of the legislature, shall pass, to cause the same to be opened and kept in repair, as county roads are. [Special Acts, page 22.]

or vacated.

*Application
for road, ad-
vertised thirty
days.*

By petition
signed by 12
resident free-
holders.

Board of com-
missioners
may appoint
three viewers.

Return of
view.

No objections
made, road or-
dered to be o-
pened.

Record.

necessary, as well for the opening all new roads which may be useful and convenient, as to vacate any public road, or part thereof, which, upon inquiry, shall be found useless and burthensome, within the limits of their respective counties.

SEC. 2. That previous to any application being made to the board of county commissioners, for an order to lay out any new road, any person desiring the same, shall advertise it in two or more public places, in each township through which such proposed road may be designed to run, for thirty days prior to the session aforesaid.

SEC. 3. Every application for any public road, shall be made by petition, specifying particularly where such road begins, and where the same shall terminate, presented to the county commissioners of the proper county, signed by at least twelve freeholders, resident in the township or townships, through which such road shall be intended to run, three of whom shall be freeholders of the neighbourhood.

SEC. 4. When any petition, in form aforesaid, shall be presented to any board of commissioners, praying for an order to lay out a new road through any part of said county, and the board be satisfied that the petitioners have given the necessary notice required by this act, the board shall order such petition to be publicly read, and thereupon shall, if they deem such petition reasonable, or the road prayed for necessary, appoint three disinterested freeholders of the county, which said freeholders, or any two of them, after taking an oath or affirmation, faithfully and impartially to discharge the duties enjoined on them, as viewers of the road for which they are appointed, shall proceed to view the ground between the two points, specified in the petition; and shall with diligence and attention, examine, lay out and mark such road, on the best ground that a possible way can be obtained, and not to take the same through any person's enclosure of one year's standing, without the owner's consent, unless, as good a way cannot otherwise be had with convenience to the public; and shall make out a statement of their proceedings, and certify the same, and return them to the board of county commissioners, at their session next to be held for such county; and the board of commissioners,

on receiving such return, shall cause the same to be publicly read, on the day at which such return shall be made; and if no objections are made to such proposed highway, on the reading of the return aforesaid, it shall be the duty of the commissioners, to order the said road to be opened a necessary width, not exceeding thirty-three feet, and made in all other respects, convenient for the passage of travellers, and cause a record thereof to be made, which shall thenceforth be deemed a public highway.

SEC. 5. If any person, through whose land, any proposed public road may run, feels aggrieved thereby, such person may, at any time, before such road is recorded, and not afterwards, set forth his or her grievances by way of remonstrance, against such proposed road, or any part thereof, presented to the commissioners of the proper county, and the commissioners shall nominate five disinterested freeholders, who shall not be related to any of the parties, interested in opening or objecting against such proposed road, and shall assign a day, for such freeholders to meet, where such proposed road begins. It shall be the duty of such five freeholders respectively, having had five days previous notice, from either of the parties, to meet on the day and at the place assigned by the commissioners, and then, or any other day, prior to the next session, to which the majority may adjourn, having first taken an oath or affirmation, before some person qualified to administer oaths, impartially to assess the damages, which such objector or objectors may be likely to sustain, by reason of such proposed road, in case the same should be opened and continued through his or their lands, to review such proposed road, and take into their consideration, how much less valuable, any tract of land, the property of such objector or objectors, will be rendered, by reason of such proposed road, should the same be opened and continued, through such tract respectively, and shall assess the damages accordingly, and report the same to the next session of the board of county commissioners, to be held for the proper county; and if three of them agree in assessing damages to the amount of the cost accruing on such remonstrance, the board of commissioners, may, if they consider it expedient, order the damages to be defrayed out of the county stock; or if that be considered inexpedient, and the petitioners will defray the same, then, in either case, such road shall be opened, and a record thereof made, and the costs and charges having accrued, in virtue of such remonstrance, shall be defrayed out of the county treasury; but if three of such freeholders, do not agree in assessing damages, to the amount of the costs aforesaid, then such objector or objectors shall pay the costs, and such proposed road shall be opened and recorded in like manner, as though no objection had been made.

SEC. 6. That objections, in time and manner aforesaid, to any proposed public road, may be made by any twelve freeholders or householders of the neighbourhood, through which the same runs, on account of the same being likely to be useless and burthensome to the townships respectively; and when such objections are made, the board of county commissioners shall proceed, in like manner by review thereof, as described in the last preceding section of this act; and if the freeholders, who review or any three of them agree,

Remon-
strance
against road.

Commission-
ers shall nom-
inate five re-
viewers of the
road objected
to.

Their duties.

Assess dam-
ages, & report.

When object-
or shall pay
costs of review

Objections
may be made
by 12 freehold-
ers to any pro-
posed road.

Review.

Roads and Highways.

Further proceedings.

that the said proposed road is likely to be useless and burthenome, if it be opened and kept in repair by the public, then, unless the petitioners respectively, will agree to open and keep in repair such proposed road, at their own private expense, all the proceedings shall be stayed, and the petitioners shall in either case, pay the costs and charges, that may have accrued; but if three of the aforesaid viewers, do not report against such proposed road, as likely to become useless and burthenome, the objectors shall pay the costs and charges, which have accrued on such review, and the said proposed road shall be ordered to be opened, and a record thereof made, and shall thenceforth be deemed a public highway.

SEC. 7. If any person, through whose land any public road shall run, shall be desirous of cultivating such part of his land, it shall be lawful for such person or persons to petition the board of county commissioners, to permit him, her, or them, at his, her, or their own expense, to turn such road, through any part of his, her, or their own land, on as good ground, and without increasing the distance, to the injury of the public; and upon such petition, the said board of commissioners shall appoint three disinterested freeholders, who shall proceed to view the ground, on which the said road is designed to be turned, and measure the respective distances of that part of the road already established, and of the proposed way, until it shall intersect the road established aforesaid, and at the next session of the said board of commissioners, shall report the several distances, with their opinion respecting the ground, on which such proposed road is to run; and if it shall appear to the satisfaction of the board of commissioners aforesaid, that the ground, on which such new part of the road is designed to run, is equally well situated, and that the difference in the distance will not materially injure the public; such board of commissioners shall permit him, her, or them to turn such road; and on receiving satisfactory assurance, that such petitioner or petitioners have opened such road, equally convenient for travellers, shall vacate so much of the former road, as shall be between the different points of intersection, and record such viewers' report; which afterwards shall be a public road or highway.

Road, how turned.

Person aggrieved by state road running through his land, how to proceed.

Three reviewers.

Roads and Highways.

view and examine that part of said road, as set forth and described in the said petition, who, after such view shall be had, may make such alterations therein, as to them may seem proper, when it can be done without materially increasing the distance, or placing the said road on worse ground; which alterations, the said commissioners shall cause to be recorded, in the same office, where the original view of said road may be recorded; after which said road shall be opened agreeably to said report, and that part of such road so altered, shall thereafter be wholly vacated, and set over to the owner of the land, through which the same may pass: *Provided*, that previous to any such alteration being made, the said petitioner or petitioners, shall pay or cause to be paid, all the expense, which may have accrued on such petition and view; and the said alteration shall not take effect, nor the old road be in any way obstructed, until the said commissioners shall upon a second view, report to the court, that that part of said road, which may have been altered, has been made equally good in every respect, as such old road, by the said petitioner or petitioners.

SEC. 9. When any public road or highway shall be considered useless, and the repairing thereof be an unreasonable burden to the township, and any twelve freeholders or householders of such township may make application to the board of commissioners in writing, signed by such persons, setting forth the situation and other circumstances of the road which they wish vacated as aforesaid, in a clear and intelligible manner, the same shall, if in the opinion of the commissioners [it] be reasonable, at the session to which it is presented, be publicly read on two different days of the session, and no further or other proceedings shall then be had thereon, but the same shall be adjourned to the next session, when the same shall be again read; when, if objections are not made thereto, in writing, signed by twelve freeholders or householders, the said commissioners, on any day in the same session, except the first day thereof, may proceed to vacate such public road or any part of said public road; and the costs and charges shall be defrayed by the county: but if objections in manner aforesaid are made, the commissioners shall proceed to appoint viewers, who shall be governed in every respect, as those appointed by the board of county commissioners, in similar cases: and the judgment of the commissioners shall be conclusive in the premises, if the same be not appealed from in nine months after giving any such judgment, to the circuit court of the county, which court is hereby authorized to hear and determine the same, and their decision shall be final and conclusive.

SEC. 10. Nothing in this act contained, shall be so construed as to give authority to any board of county commis-

Petitioner pay expense and open new way

Useless road, how vacated.

Objections to vacation of, viewers appointed.

No street, &c.
shall be vaca-
ted.

Who liable to
work on roads

Quantity of
work or tax.

Owners of
town lots.

Teamster.

Tavern keep-
er, &c.

sioners or circuit court, to vacate any street or highway, in any city, borough, town or village, in the state, which has been laid out by the proprietors thereof, or by any other person or persons, and dedicated to public use; nor to vacate any road laid out by order of the board of commissioners, which is not repairable at public charge, nor any road or passage claimed by private right, nor to rivers or streams of water.

SEC. 11. Each and every male person of the age of twenty-one years, and not over fifty years, (preachers of the gospel regularly ordained, according to the rules of their sect, such other persons as may be exempt by law, or such as may be excused, by the court doing county business, for good cause shewn, excepted,) shall be liable to work on public roads and highways, or pay an equivalent therefor, in the township where they reside, in manner and form following, to wit: Each person not being the owner of any real estate in his proper county, shall work three days; every person being the owner of eighty and not less than forty acres of land, either by deed, bond or certificate, shall be subject to work on public roads and highways, four days in each year; every person owning any quantity of land over eighty acres, and not more than one hundred and sixty, either by bond, deed or certificate, shall be subject to work on public roads and highways, five days in each year, and for every additional one hundred and sixty acres of land, he shall have one day's labour added to his quantum of labour as aforesaid: *Provided*, that no person shall be subject to work more than ten days, for any quantity of land he may own, in any one year, the work to be applied in the proper road district, where said land may lie under the directions of the supervisor of said district: For each town lot, when such person is not the owner of any other landed property in his county, one day in addition to the three days herein before mentioned, until the whole number of days required may amount to six days, but not more: each owner of a wagon and team of two or more horses or oxen, employed as a road wagon, two days in addition to his personal tax; each licensed tavern keeper, store keeper or grocer, who may not be the owner of any real estate, six days: *Provided always*, that after each person shall have been called on to perform the number of days work required of them by this act, if any road should remain unfinished or not put in complete repair, or at any time be found out of repair, it shall be the duty of the supervisor of such road, to call the hands assigned him, to complete, put or keep such road in repair, and in case of failure so to do, he shall be liable to damages, at the suit of any person injured thereby, by action of trespass, on the case, before any court having competent jurisdiction thereof, for the use of the party injured, and moreover shall be liable to be fined in any sum not exceeding twenty dollars,

by presentment or indictment, for the use of a seminary of learning. And if any person whose duty it may be to perform any number of days work, agreeably to the provisions of this act, shall fail to perform the same, in a sufficient and faithful manner, such person shall pay the sum of fifty cents

Resident shall
pay 50 cents
per day in lieu
of work.

for each and every day he may fail so to work, to the said supervisor, whenever thereto required; and on failure so to do, the same shall be recovered by such supervisor, by action of debt, before any justice of the peace of the proper county: *Provided however*, that no supervisor shall be authorized to receive in payment for any default, in failing to work upon any highway, any county order, except certificates for services as grand jurors. And such supervisor shall keep a fair book of entries, in which he shall note down the amount of monies so received, which he shall deliver over to his successor in office, together with whatever money he may have collected, and which may not be disposed of, as hereinafter provided, to wit: It shall be the duty of each supervisor to employ hands to put or keep in repair his said road, by expending the money so collected as above, for that purpose, provided he shall find it necessary; and no supervisor shall call on the hands so allotted to him to perform any labour on any road, over and above the number of days as above stated, until the whole of the money, by him so collected from delinquents, shall be first laid out and expended, agreeably to the true intent and meaning of this act. And each and every supervisor shall deliver over to his successor, a list of the names of each and every person, so assigned to him, with the number of days labour performed by each one opposite his name; and such supervisor shall have power and authority to coerce payment from each and every person, who may be returned delinquent, in the same manner his predecessor could, might, or ought to have done: *Provided also*, that each and every person non-resident of this state, and who may be the owner

Supervisor
shall keep
book and deli-
ver over to his
successor.

Money, how
expended.

Non-resident
owning one or
more quarters
of land, work
four days in
the county
where the
land lies.

Non-resident
of the state,
shall pay 75
cents per day
in lieu of work

for some public road, in such county, most convenient to the land of such non-resident, and on failure so to do, shall be liable to pay into the county treasury, the sum of seventy-five cents for each and every day they may so omit to labour; and in case of failure so to work or to pay into the county treasury, the amount as aforesaid, on or before the first day of December in each and every year, it shall be the duty of the sheriff of the proper county, on being notified of such failure, to advertise in some public newspaper in this state for four weeks successively, that he will expose to sale the land or lands of said non-resident, for the payment of the sum so due and in arrear, and on sale thereof, the sheriff shall sell

Sheriff sell land
for road tax.

to the highest bidder, so much of the most southerly part of such tract of land, as will pay the amount due, with costs of advertising and selling the same, and give the purchaser a certificate therefor upon the same principle, and subject to the same mode of redemption, as other lands are, when sold for the state or county taxes, but not otherwise; which money, when so collected, shall be paid over by the sheriff to the court doing county business, to be by them paid over to the supervisors of roads, in the townships where such non-resident's land is situate, to be laid out by such supervisor or supervisors, in opening and keeping in repair the road or roads assigned to him or them.

SEC. 12. The board of county commissioners, for each and every county, at their May session, to be holden in each and every year, shall appoint a necessary number of free-holders within their respective counties, to be supervisors of the highways, who shall serve one year; and the said supervisors of the public roads and highways of the several counties, shall be and they are hereby required and enjoined, as often as the said several roads and highways, within their districts, shall be laid out and directed to be opened, by lawful authority, to hire and employ a sufficient number of labourers to work upon, open, and amend, clear and repair the same, in the most effectual manner, and to purchase wood and all other materials necessary for that purpose, and oversee the said labourers and keep them close to their business, and take care, that the said roads and highways be effectually opened, cleared, amended, and repaired, according to the true intent and meaning of this act. But nothing in this act shall be so construed, as to authorize the supervisor to hire hands, until he has duly notified those allotted to him, by the board of commissioners, to attend and perform the number of days labour required of them by this act.

SEC. 13. In order to enable the supervisors, the more effectually to discharge their duty, it shall and may be lawful for the supervisors aforesaid, or any other person or persons, by his or their order and direction, to enter upon any lands adjoining to or lying near the public roads and highways, within their respective districts, and to cut or open such dams or ditches through the same, as he or they shall judge necessary, completely to carry off and drain the water from such roads, doing however, as little injury and damage as may be, to the owner of such land; which drains and ditches, so cut and opened, shall be kept open by said supervisors if necessary, and shall not be stopped or filled up by the owner or owners of such land, or any other person or persons whatever, under the penalty of five dollars for every such offence, to be recovered before any justice of the peace, in any county, and applied to the opening and re-

*Supervisors,
how appoint
ed.*

Their duties.

*May enter on
contiguous
lands, &c.*

Make ditches.

pairing highways in the district, wherein the offence shall have been committed.

SEC. 14. The said supervisors shall have full power and authority, on any unimproved grounds or lands adjoining the road or highway, within their respective townships, to dig or cause to be dug, any gravel, sand or stone, or to gather any stones lying on the said lands, or to cut down any wood or trees, growing near or adjoining to the said roads or highways, as they shall think necessary for the purpose aforesaid; but the same shall be done with as little damage as may be, to the owner or owners of such land; and the gravel, stones, sand or wood, so dug, gathered or cut, shall be carried off without the let hindrance or control of the owner.

SEC. 15. If any person or persons shall for the convenience of themselves or neighbours, wish to have a cart road laid out, from or to the plantation or dwelling house of any person, or to any public highway, the person or persons applying for the same, shall advertise their intentions, as by this law is required in case of highways, and shall petition the board of commissioners of the proper county, who shall cause the same to be publicly read, and shall, if they think proper, order and direct a view of the place, where such road is required to be laid out.

SEC. 16. Cart roads laid out in pursuance of this act, shall not exceed eighteen feet in breadth. They shall be recorded, and from thenceforward, shall be allowed and declared common roads or cart ways, for the use and convenience of all such as have occasion to travel the same, and shall be opened by the persons petitioning therefor; and if the said road shall be laid out through any person's unimproved land, then the same shall be valued, as in this act directed, in case of persons objecting to public roads or highways; and on the value thereof being paid to the owner or owners of the land, by the person at whose request the same was laid out, they shall have liberty to open said road agreeably to the order of the board of commissioners.

SEC. 17. If any owner or owners of any land, through which such cart road may pass, shall be desirous of improving his, or their lands, they shall be permitted to turn the same, provided the ground on which they propose turning it, is equally as good for a road, and shall not increase the distance more than one twentieth part thereof, or shall be permitted to hang swinging gates, upon such cart road or roads, but shall at all times, keep the said gates in good order and repair, under the penalty of one dollar for every offence, to be recovered before any justice of the peace, in any county wherein the offence shall have been committed, by any person prosecuting for the same, one moiety there-

*Procure mate-
rials for makin-
g the road.*

*Cart road,
how establish-
ed.*

How turned..

Gates.

of to the prosecutor, and the other moiety towards keeping said roads in repair.

Post of direction at the forks of public road.

Penalty for defacing.

Penalty for taking down or obliterating advertisement

Obstructing of road, how punished.

Compensation of supervisors.

SEC. 18. It shall be the duty of each and every supervisor, within their respective districts, to erect and keep a post at the forks of every public road or highway, within their respective districts, containing an inscription in legible characters, directing the way, and mentioning the most remarkable places on each road respectively, and on failure so to do, shall forfeit and pay any sum, not exceeding five dollars; and if any person shall demolish any such post, deface or alter any inscription thereon made, with an intent to destroy the utility of such sign, he or she so offending, shall for every such offence, forfeit and pay to the supervisor of such road respectively, the sum of ten dollars, to be recovered before any justice of the peace of the county, wherein the offence shall have been committed, for the use of such district respectively.

SEC. 19. If any person shall take down, obliterate or destroy any advertisement or written notice, necessary to be put up under the provisions of this act, he, she or they so offending, shall for every such offence, forfeit and pay the sum of ten dollars, to be recovered by indictment, before any court having cognizance thereof, to be held in the county where the offence shall have been committed, to the use of the county.

SEC. 20. That if any person shall obstruct any road laid [out] or to be kept in repair under the authority of law, and shall suffer such obstruction to remain, to the hinderance of passengers, such person so offending, shall forfeit and pay for every such offence, any sum not exceeding ten dollars, to be recovered with costs of suit, in the name of the supervisor in whose district such road may be obstructed; and it shall be the duty of the supervisors respectively, as often as they are informed of such obstruction, to commence suit against the person obstructing the same, before any justice of the peace of the county, where the offence shall happen; and upon the oath of one or more credible witness or witnesses, judgment shall be rendered and collected, as other debts are of a similar amount; and if any person fined as aforesaid, shall suffer such obstruction to remain, to the hinderance of passengers as aforesaid, such person shall forfeit the sum of one dollar for each day he may suffer such obstruction to remain, to be recovered before any justice of the peace in manner and form aforesaid.

SEC. 21. That the supervisors appointed under the provisions of this act, shall, as a compensation for their services, be exempted from militia duty, working on roads and serving on juries, during the term for which they are appointed.

SEC. 22. Each supervisor shall annually furnish the clerk of the commissioners of his county, with a list of the lands

in his district, owned by persons not residing in the county in which such district is situate, on or before the first Monday in May.

SEC. 23. Whenever any public road or highway shall run through or border on any plantation, and shall become obstructed by the falling of trees or otherwise, within or adjoining to the boundaries of such plantation or lands, owned by such person adjoining thereto, it shall be the duty of the owner of such plantation, to remove such obstruction, so soon as the same shall come to his knowledge, for which the supervisor of such road, shall make him a reasonable allowance, and give him a credit therefor, on the number of days he may be liable by law, to work on roads and highways.

SEC. 24. Whenever it shall be necessary to establish a road leading from the county seat of one county, to any place in another county, the county commissioners of each county in which said road is proposed to run, shall, if they deem the same expedient, on application of twenty freeholders therein resident, appoint three persons as viewers, who or a majority of them, shall, after being duly sworn, proceed according to the provisions of this act, and make return of their proceeding, within six months from the date of their appointment: and such road when established, shall not be altered, except by viewers appointed, as is required in this section; but before viewers shall be appointed as above, it shall be made appear to the county commissioners, that three written notices of such intended application have been put up in public places in such county, sixty days previous to such application.

SEC. 25. That an appeal from the proceedings of the county commissioners, shall lie and be allowed to the circuit courts: *Provided*, that such appeal be entered with the clerk of the commissioners, within fifteen days after the proceedings were had, before said commissioners, by the appellant or appellants giving bond with sufficient security, for the costs and charges of such appeal; and the circuit courts are hereby empowered, on every such appeal, to order and appoint another view of such road, and proceed therein in like manner, as the commissioners are enabled to do; but no order for opening any road shall be issued, until the time allowed by this section for an appeal, shall have expired, and if no appeal is entered as aforesaid, within the time aforesaid, then the clerk of the board of county commissioners of the proper county, shall issue the order required by law.

SEC. 26. Each supervisor of the highway, shall have the direction of all the hands in his district, and shall be bound to deliver over to his successor, a list of all the hands in his district, and before entering upon the duties of his office; and shall take an oath, before some person authorized to admin-

List of non-resident lands &c.

Obstruction to road bordering on plantation, how removed.

Road from one county seat to another, how established.

Supervisor have the direction of the hands.
Take oath.

Roads and Highways.

ister the same, faithfully and impartially to discharge the duties of his office, according to law, and to the best of his abilities and judgment; a certificate of having taken such oaths, shall be endorsed on the back of his certificate of appointment, by the person administering the same.

Bridges.

SEC. 27. Whenever hereafter, in the opinion of the board of county commissioners of any county, the public convenience shall require that a bridge or bridges should be built over any water course, within their respective counties, where any public road shall cross the same, they shall appoint three disinterested persons resident in the township, in which such bridge or bridges are to be built, whose duty it shall be, to advertise throughout the county, the time and place where they shall attend, for the purpose of contracting with fit person or persons, for the building of such bridge or bridges, after such plan or manner as they shall direct, upon the most advantageous terms, which can be had, and which shall be the most permanent and beneficial; which contract shall be in writing, signed by the parties contracting, and filed in the clerk's office of the proper county, to be by him preserved: and the several boards of county commissioners, shall allow to the superintendents a reasonable compensation for their services herein.

SEC. 28. The superintendents appointed by the board of county commissioners, under the provisions of this act, shall, before they enter upon the duties of their said office, take and subscribe, before some justice of the peace of the proper county, an oath, faithfully and impartially to discharge the duties of their office, and the justice administering the same, shall, within ten days thereafter, transmit a certified copy thereof to the clerk of the proper county, to be by him filed in his office.

SEC. 29. In all cases, bond and security shall be required from the undertaker, which security shall be approved of by the board of county commissioners.

Donations for
bridges.

SEC. 30. It shall be lawful for the board of county commissioners, to receive from individuals, subscriptions and other donations, which they may think proper to contribute, towards the building of any bridge or bridges, and which shall be applied accordingly.

Bridges may
be authorized
on the principle
of ferries.

SEC. 31. *Be it further enacted,* That if in the opinion of the board of county commissioners, it would be for the benefit of the citizens of their county, to have a bridge built over any creek or water course, where money cannot be had by donations to build such bridge, nor by taxation, without oppressing the people of the county, they are hereby authorized, to empower any individual or individuals, who are willing to undertake to build the same, under the same rules and regulations that ferries are established: *Provided*, the person or persons building such bridge, shall always be

Salaries.

bound to transfer the same to the county, at ten per cent. on cost, when the commissioners are willing to purchase it: *Provided however*, that the supervisors appointed by the provisions of this act, in the several townships of the counties of what is called the New Purchase, shall have a right to call out the hands allotted to them severally, six days in each year, in order to put and keep the roads assigned to them respectively in repair.

CHAPTER LXXXVIII.

An Act fixing the Salaries of certain Officers, and for other purposes.

[APPROVED, JANUARY 23, 1813.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the governor shall be allowed the annual salary of one thousand dollars, to be paid quarterly; the judges of the supreme court shall be allowed the annual salary of seven hundred dollars each, to be paid quarterly; the president of the circuit courts shall be allowed the annual salary of seven hundred dollars each, payable quarterly.

SEC. 2. Each member of the general assembly, with the president of the senate and speaker of the house of representatives, until otherwise directed by law, shall be entitled to, and allowed for each and every day's attendance, the sum of two dollars, and the sum of two dollars, for every twenty-five miles travelling to and from the seat of government, the most usual road; the secretary of the senate and the clerk of the house of representatives, shall be allowed the sum of three dollars and fifty cents each per day for their services, and their assistants, each three dollars per day for their services; and the door-keeper of the senate and of the house of representatives, shall be each allowed the sum of two dollars per day for their services; the revising clerks employed by the committee of revision, shall each be allowed three dollars per day, for the time they were employed.

SEC. 3. The compensation which shall be due to the members, secretaries and door-keeper of the senate, shall be certified by the president thereof; and that which shall be due to the members, clerks and door-keeper of the house of representatives, shall be certified by the speaker of the house of representatives. The president of the senate shall certify the time the revising clerks were employed, and the amount to each of them due respectively.

SEC. 4. It shall be the duty of the auditor of public accounts, to audit the several claims by this act allowed, which Auditor, his duties.

shall be paid out of the state treasury as other audited claims are.

SEC. 5. This act shall take effect and be in force from and after its passage.

CHAPTER LXXXIX.

An Act concerning lands granted for the use of Salt Springs, and to encourage the Manufacture of Salt.

[APPROVED, JANUARY 22, 1824.]

Sec. 1. Be it enacted by the General Assembly of the state of Indiana, That the governor be and he is hereby authorized and empowered from time to time, or as often as he shall receive information of any salt spring on the lands of the United States, within the limits of this state, to employ some fit person if he should deem it necessary, to examine the same, and ascertain the probable quantity of land, necessary for working such spring or springs so found, or which may have been returned as salt springs by the surveyors of the public lands; and the governor is further authorized and empowered, for and in behalf of the state, to make application to the president of the United States, for such quantity of land, at each and every salt spring, as he may deem sufficient for working the same.

Sec. 2. And the governor, as agent for and in behalf of the state, is hereby invested with full power to do and transact, all and every thing that may be necessary on the part of this state, fully to carry into effect the second proposition contained in the sixth section of an act of congress, entitled "An act to enable the people of the Indiana territory, to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states."

Sec. 3. And any expense which may be created by virtue of this act, shall be paid out of the contingent fund, in the same manner as other contingencies are paid.

Sec. 4. It shall be the duty of the presiding judge of each judicial district, on application made to him, to grant unto any person or persons, a lease of any salt spring, lick, or other place likely for salt to be made, within his judicial district, together with so much land as may be necessary for carrying said lease into effect, if the land be within the control of the state, for any term not exceeding ten years; and on granting any lease as aforesaid, it shall be the duty of the judge granting the same, to take from the person or persons so applying, a bond with sufficient security, payable to

His further duties.

Expense paid out of the contingent fund.

Presiding judge to grant leases of salt springs.

Take bond.

the governor and his successors in office, for the use of the state, in the sum of five hundred dollars, conditioned that such lessee or lessees shall not destroy or injure any timber, more than what may be necessary for carrying into effect the conditions of such lease; which bond shall be filed by the judge taking the same, in the office of the clerk of the circuit court, nearest where the lease is given; and the judge aforesaid, shall receive from the obligor or obligors in said bond, the sum of two dollars for his trouble in giving such fees.

SEC. 5. If the person or persons taking any lease as aforesaid, shall neglect or refuse to make the necessary preparations for making salt, within two years after the granting such lease, then such lease or contract is hereby declared forfeited and of no effect.

CHAPTER XC.

An Act concerning Saltpetre Caves, and for other purposes.

[APPROVED, JANUARY 8, 1823.]

Whereas it has been represented to this general assembly, that great loss has been sustained by the owners of stock, cattle and horses, from the use of the substance extracted from saltpetre caves, epsom salt caves and others of different kinds, in consequence of the same having been left unenclosed by the owners or occupiers thereof, for remedy whereof:

Be it enacted by the General Assembly of the state of Indiana, That if any person or persons being the owner or owners, occupier or occupiers, of any cave of saltpetre, epsom salts, or other caves of similar obnoxious qualities, who shall permit the same to remain unenclosed and exposed to the stock, cattle or horses of the neighbourhood; such person or persons so offending, shall be liable to a penalty and fine of ten dollars for every day such nuisance may be continued, recoverable as in other cases; which when collected, shall be paid over to the proper agent for county seminary purposes; and shall moreover be liable in damages to the party injured for any losses sustained by his, her or their stock, using the same; and that all persons, being the owners or occupiers, of any salt works or salt water, shall keep the same enclosed, under similar penalties.

Preamble

CHAPTER XCI.

An Act providing for a Public Seal and Press.

[APPROVED, DECEMBER 13, 1816.]

Be it enacted by the General Assembly of the state of Indiana,
 That the governor of this state be, and he is hereby authorized to provide a seal, and also a press for the said state; and that a sum not exceeding one hundred dollars be, and is hereby appropriated for that purpose, to be paid out of any monies in the treasury not otherwise appropriated.

CHAPTER XCII.

An Act establishing the permanent Seat of Government of the state of Indiana.

[APPROVED, JANUARY 20, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That Indianapolis in the county of Marion, be, and the same is hereby adopted and established, as the permanent seat of government of this state, upon, from and after the second Monday in January, in the year one thousand eight hundred and twenty-five.

Indianapolis
the permanent
seat of govt.

Offices, books,
&c. to be re-
moved.

SEC. 2. Each and every person holding any office of whatsoever nature, either civil or military, under or by authority of the state of Indiana, to discharge the duties whereof, a residence or attendance at the seat of government is required, by the constitution or laws of this state, are hereby directed and required to remove their several offices, together with all the books, records, documents, papers, public furniture, and other public property thereunto belonging, or in any wise appertaining, to Indianapolis aforesaid, previous to the said second Monday in January, in the said year, one thousand eight hundred and twenty-five; and Samuel Merrill, esq'r, is hereby appointed on behalf of the state, to superintend generally, the removal of the records, documents, and public property of every description, as well those above referred to, as all and every other article or species of property, which now or hereafter may be remaining at Corydon, the present temporary seat of government, which may belong to the state, to Indianapolis aforesaid, previous to the said second Monday in January, in the said year one thousand eight hundred and twenty-five; and he is required to keep a fair and exact account of the expenses necessarily incurred in the said transportation and removal, to be submitted to the general assembly, at their next regular session.

SEC. 3. The use of the court house, on square number fifty-eight, in Indianapolis aforesaid, is set apart, reserved, and appropriated to the federal court of the United States, within this state, as a place to hold their sessions forever, from and after the second Monday in January one thousand eight hundred and twenty-five; and all persons holding offices of any kind, under or by authority of the United States, within this state, to discharge the duties whereof, their residence, or regular or occasional attendance is required at the seat of government of this state, are hereby notified of the removal thereof above directed and required, to consider Indianapolis aforesaid, as the permanent seat of government of this state, upon, from and after the said second Monday in January one thousand eight hundred and twenty-five.

Court house
reserved for
the use of the
federal court;

SEC. 4. The use of the court house aforesaid at Indianapolis, is set apart, reserved, and hereby appropriated to the supreme court of this state, as a place to hold their sessions forever, from and after the said second Monday in January, in the year one thousand eight hundred and twenty-five, of which all persons concerned, are hereby required to take notice. And all writs, process, and documents of every description, which shall be returnable to said court, from and after the date last above named, are hereby declared and made returnable to Indianapolis aforesaid.

Supreme court;

SEC. 5. All returns, reports, certificates, and documents of every description whatever, which, by the laws of this state, may be returnable after the second Monday in January, in the year one thousand eight hundred and twenty-five, to any officer of this state, either in the civil or military department of government, at the seat of government, are hereby required, after said date, to be returned to such officer at Indianapolis aforesaid.

Documents
returnable &c

SEC. 6. The next regular session of the general assembly of this state, shall commence and be helden at the court house in Indianapolis aforesaid, on the said second Monday in January one thousand eight hundred and twenty-five, and at no other place, or other period previous thereto, unless on any extraordinary occasion, the governor may convene them at Corydon, the present seat of government, or elsewhere, as provided by the constitution, previous to the said second Monday in January one thousand eight hundred and twenty-five: And the use of the said court house at Indianapolis, is hereby set apart, reserved, and appropriated, to the general assembly of the state of Indiana, in which to hold their legislative sessions, from and after the said second Monday of January, in the year one thousand eight hundred and twenty-five, for the term of fifty years, then next ensuing.

General as-
sembly, where
to convene.

SEC. 7. The auditor of public accounts, and treasurer

Court house
to be occupied
by the legisla-
ture for the
term of fifty
years.

Seats of Justice.

Executive officers, their duties.

of state, and all other persons holding any office under the authority of this state, whose duty it is or may be, to transmit or present any reports, messages, or other documents whatever, to the next general assembly, are hereby directed and required, to transmit or present the same, at the next regular session thereof, so as aforesaid to be holden, at Indianapolis aforesaid, on the second Monday in January A. D. 1825, and at no other period or place whatever.

CHAPTER XCIII.

An Act to establish Seats of Justice in New Counties,

[APPROVED, JANUARY 14, 1824.]

Five commissioners.

Convene.

Receive donations.

Take bond for conveyance.

Seats of Justice.

conveyance of such tract or tracts of land so given or sold, to such person as the county commissioners shall appoint as agent to receive the same, which bond or bonds the said commissioners shall deliver to the county commissioners, together with a plain and correct report of their proceedings, Report, containing a particular description of the land so selected, which shall be considered the permanent seat of justice for such county.

SEC. 2. It shall be the duty of the commissioners, in the event of the non-attendance of a sufficient number to transact the business aforesaid, to adjourn to any other day, and give the absent commissioners notice of the day to which they have so adjourned; and the board of county commissioners in case of death, removal, or resignation of the agent as aforesaid, to appoint from time to time a successor, when and as often as may be necessary, who shall give bond as hereafter provided; and it shall be the further duty of the said board of county commissioners, when and so often as it may be necessary to carry this law into complete effect, to hold special sessions of the said board; and the county commissioners and said agent, are hereby vested with all further powers necessary to carry this law into full and complete operation, according to the true intent and meaning thereof.

Vacancy of agent, how filled.

County commissioners may hold special sessions.

A town may be selected for the seat of justice.

SEC. 3. That if in the opinion of the commissioners appointed as aforesaid, no situation can be found whereon to lay off a town for a county seat, that would be equally convenient to the citizens of the county, as to establish such county seat at some town already laid off, then said commissioners are hereby authorized to receive donations in lots, money, and adjoining lands, and to establish the county seat at such town, as they shall think will be most for the interest of such county: *Provided however*, that ten per centum of such donations, be reserved for the use of a county library.

Agent, how appointed & his duties.

SEC. 4. It shall be the duty of the board of county commissioners, forthwith after receiving the report as herein provided, to appoint some suitable person, a resident of such county, as an agent, whose duty it shall be, after giving security to be approved of by the said board of county commissioners, for the faithful discharge of the duties of his said office, to receive good and sufficient deeds of conveyance, for any land which may have been given, for the use of the county as above provided, and to lay off the same into town lots, streets, and alleys, according to such plan as the county commissioners may direct; he shall proceed also, from time to time, to sell the said lots, or so many of them as the said commissioners may deem proper and necessary, on such terms as the county commissioners may consider most advantageous to the county; and to collect all monies arising from the sale of said lots, and pay the same into the county

Seats of Justice.

treasury; he shall also make conveyances to the purchasers of such lots. The monies arising from the sale of lots as aforesaid, shall be a fund in the treasury of such county, out of which the commissioners appointed by virtue of this act, shall be first compensated for their services, and then the price of any land which may have been purchased for the use of the county, shall be paid, and the balance shall be applied, so far as necessary, in defraying the expenses of erecting the necessary public buildings, for the use of the county, and if monies still remain, such remainder shall be applied as other monies in the treasury.

SEC. 5. Any person or persons of whom any lands may be purchased for the use of such county, shall at the time of giving bonds for the conveyance of the same, receive of the commissioners aforesaid, a certificate of the quantity and price of the same, which certificate shall entitle such person to receive the amount of the price of such land, out of the first monies remaining in the treasury of such county, after compensating the aforesaid commissioners, according to the provisions aforesaid. The said commissioners shall be entitled to receive each three dollars, for every day they may be necessarily employed, in performing the duties enjoined on them by this act, and in travelling to and from the place of meeting; and the agent aforesaid, shall be entitled to receive for his services, such compensation as the board of county commissioners may think just and reasonable.

SEC. 6. It shall be the duty of every person appointed agent under the provisions of this act, who shall remove out of the county, for which he shall have been appointed, resign said agency or vacate the same, in any other way whatever, forthwith to deliver to his successor in said office, and in case no such successor shall have been appointed, to the board of county commissioners or treasurer of the proper county, all deeds, notes, books, or other papers appertaining to said agency, under pain of forfeiting the conditions of the bond, which he may have given, for the faithful performance of the duties of his said office, taking a receipt from such successor, board of county commissioners or county treasurer, as the case may be, specifying particularly the deeds, bonds, notes, books, or other papers, and amount of money, thing or things owing to him, in his official capacity, for the use of the county; and it shall be the duty of every county treasurer, who shall receive any such deeds, bonds, notes, books or other papers, to lay the same before the next board of commissioners to be holden in said county, who shall and they are hereby authorized to allow the said treasurer, a reasonable compensation for so doing, out of any monies in the treasury of said county, not otherwise appropriated.

Commissioners to give certificate of the quantity and price of land purchased.

Compensation.

Agent to deliver books, papers, &c.

Seats of Justice.

SEC. 7. Every person appointed as agent, to receive any Successor of agency vacated as aforesaid, is hereby required to receive and receipt for all deeds, bonds, notes, books or other papers, in manner aforesaid, and to perform all and singular the duties, obligations and other things, relative to such deeds, bonds, notes, books or other papers so put into his hands, which could have been required of his predecessor, had he continued in said office, agreeably to the true intent and meaning of this act.

SEC. 8. All agents as aforesaid heretofore appointed, and those who may hereafter be appointed, shall every four months, and oftener if thereunto required, settle and account with the commissioners of their respective counties; and if any agent appointed as aforesaid, shall fail, neglect or refuse so to settle and account, or shall neglect or refuse to pay over any money which may have come to his hands, or shall neglect or refuse to do and perform any of the duties enjoined on him by law, it shall be lawful for said county commissioners to remove said agent from office, and appoint a successor, to whom the agent so removed, shall deliver all books, papers, notes, receipts, accounts, monies, goods, and effects of every description, which may be in his hands belonging to the proper county; and on his refusing so to do, it shall be lawful for the commissioners of the proper county, to proceed by action of debt or covenant, on his bond; and on recovering a judgment on said bond, against such agent and his securities, execution shall issue, and there shall be no stay thereon.

SEC. 9. All agents as aforesaid, shall pay over to their successors in office, the board of county commissioners, or county treasurer, as the case may be, the same description of circulating medium, which they shall have collected or received, for which they shall receive receipts, specifying the kind of money paid over; and any agent who shall fail or refuse to pay over as aforesaid, when ordered so to do by the county commissioners, he shall be liable to be removed from office by said commissioners; and it shall be considered a breach of his bond, on which he may be prosecuted by action of debt or covenant, as in the preceding section is provided.

SEC. 10. If any agent appointed agreeably to the provisions herein contained, shall die before he shall have completed all the duties enjoined on him by law, and having in his possession, at the time of his death, any deeds, bonds, notes, books or other papers as aforesaid, it shall be the duty of the executor or executors, administrator or administrators as the case may be, of every such decedent, to deliver to the person legally appointed to succeed the said testator or intestate in said agency, or to the county treasurer or board of county commissioners, all deeds, bonds, notes,

Agent to settle & account.

Failing, to be removed.

Shall pay over the same circulating medium they receive.

Executors &c. of agents, to deliver books and papers.

Certain officers may not be agents.

books or other papers as aforesaid, in the same manner and under the same rules and regulations, that are pointed out in the preceding sections.

SEC. 11. No county commissioner, county treasurer, or clerk of the circuit court, shall hereafter exercise the duties of agent as aforesaid, and every person holding the office of agent as aforesaid, who shall accept of either of the said offices, shall be considered as vacating said agency, which shall be filled accordingly.

CHAPTER XCIV.

An Act concerning the Secretary of State.

[APPROVED, JANUARY 30, 1824.]

Affix seal of state to instruments requiring the governor's signature.

Obligations to be approved of by the governor, shall be taken by the secretary of state.

Authentica-
ted copies, ev-
idence in cer-
tain cases.

His duties.

Bond.

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the secretary of state, in addition to the duties enjoined on him by the constitution, shall affix the seal of the state to all public instruments, to which the governor's signature now is, or hereafter may be required by law.

SEC. 2. All obligations which now are, or hereafter shall be by law required to be given to the state, or to the governor or thereof, for the faithful discharge of any office, commission, or public trust, and the sureties therein, to be approved of by the governor, except in cases otherwise provided for by law, shall be taken by the secretary, for the uses and purposes therein respectively expressed, and recorded in his office; and copies of such obligations, duly authenticated, under the seal of such office, shall be admitted as legal evidence, in any suit or suits that may or shall be brought against the obligors or their securities.

SEC. 3. The said secretary of state, shall keep and preserve all acts passed by the general assembly, and shall permit the books, papers, and accounts belonging to his office, to be at all times open to the inspection and examination of committees of each branch of the general assembly, and shall furnish such copies, or abstracts therefrom, as may from time to time be required.

SEC. 4. The secretary shall give bond to the governor, and his successors in office, for the use of the state, in the penal sum of two thousand dollars, with sufficient security, to be approved of by the governor, conditioned for the due and faithful performance of the several trusts to him committed; which bond shall be duly acknowledged and deposited by the governor, in the recorder's office of the county, in which the seat of government is fixed, and there recorded; and a copy of such obligation from the records of said re-

corder's office, shall be admitted as legal evidence, in any suit or suits, that may or shall be brought against such secretary or his securities.

SEC. 5. The salary of the secretary of state, shall be four hundred dollars per annum, payable in quarterly payments, by warrant drawn on the treasurer, by the auditor for that purpose.

SEC. 6. That the secretary of state be allowed the sum of one dollar, for each and every pardon of any offence, granted by the governor, to persons convicted of any crime or misdemeanor, by any court within this state, and the like sum, for each and every remittance of stripes, lashes, fine, imprisonment, or any other punishment whatever, so granted as aforesaid, for his services in and about the granting and issuing of the said pardons and remissions; to be paid by the person receiving the benefit of said pardon or remission; and the said secretary shall not be compelled to issue such pardon or remission, till the said sum of one dollar be paid or tendered to him.

SEC. 7. That whenever the secretary of state, shall by reason of sickness, necessary absence, or inability, be prevented from discharging the duties of his office, his deputy ^{May appoint} or deputies, lawfully appointed under his hand and seal, ^{deputy.} shall be and are hereby authorized and empowered to execute all the duties, which the said secretary of state could have lawfully executed in person, till such disability be removed.

SEC. 8. That it shall be the duty of the said secretary, by himself or his deputy, in case of the disability of the secretary, to attend at his office, each and every day in the year, Sundays excepted, between and during the hours of Office hours, ten and twelve o'clock.

CHAPTER XCV.

An Act concerning Debtors and their Securities.

[APPROVED, JANUARY 30, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That when any person bound as security, by bond, bill, note, or otherwise, for the payment of money, or performance of a contract, shall apprehend that the principal debtor for whom he is bound, is likely to become insolvent, or migrate from this state, without previously satisfying or discharging such debt, duty, demand, or obligation, so that it will become impossible, or difficult for such security, after paying, satisfying, or discharging such debt, duty, or ob-

Security fearing the insolvency, &c. of his principal, may notify creditor to bring suit.

ligation, to recover the value thereof, from such principal debtor; it shall be lawful for such security, if action shall have accrued, on any such contract as aforesaid, to require by notice in writing, his creditor forthwith to put the bond, bill, note, or other contract, by which he is bound as aforesaid, in suit; who shall within reasonable time, commence an action, and proceed with due diligence, to judgment and execution thereon; and if such creditor, shall fail or neglect to proceed as aforesaid, the said surety shall be discharged from the performance of said contract.

Provisions of
this act, to
whom extend-
ed.

Security hav-
ing paid the
debt of principle,
may have
judgment on
motion.

Proceedings
where there
are two or
more securi-
ties, & princi-
pal insolvent.

Security may
not confess
judgment to
the prejudice
of his princi-
pal, &c.

Remedy in fa-
vour of spe-
cial bail.

SEC. 2. That the provisions of this act, shall be extended to the heir, executor, or administrator of any deceased security, against the creditor or his assignee, executor, or administrator, upon his compliance with the first section of this act; but nothing herein contained, shall be construed to extend to the official bonds of public officers, guardians, executors, administrators, or bonds with collateral conditions.

SEC. 3. That when any security, his heir, executor, or administrator, pays or discharges the debt or contract of his principal, or part thereof, upon judgment rendered against him, he shall have judgment to recover the value, or amount so paid or discharged, together with interest and costs, upon motion in the court, where such judgment may have been rendered against such security, his heir, executor, or administrator of such principal debtor, his heir, executor, or administrator.

SEC. 4. That in cases where there are two or more sureties to any bond, bill, note, or contract, and one or more of such sureties are subjected by judgment of any court, to the payment of the debt or damage, by default of the principal obligor, and such obligor be insolvent, so that the amount or value thereof, cannot be recovered of him, the court before whom such judgment may be rendered, shall upon motion of such surety or sureties, grant judgment that they recover against all and every the other co-sureties, their heirs, executors, and administrators, for their and each of their respective shares, and proportions of the amount or value of such judgment, with damages and costs.

SEC. 5. That no surety, his heir, executor, or administrator, shall be suffered to confess, or suffer judgment by default, so as to distress his principal, if such principal will enter himself defendant to such suit, and tender to such surety, or his legal representative aforesaid, good collateral security, to be approved by the court before whom such suit is depending.

SEC. 6. That when the special bail of any judgment debtor, shall be damned by the payment of such judgment, or part thereof, it shall be lawful for such bail, his executor, administrator, or heir, to recover the amount of such pay-

ment, with interest and costs, upon motion in the same court, where judgment was rendered against such bail, or his legal representatives of the said debtor, his heir, executor, or administrator.

SEC. 7. That in all proceedings by motion under this act, ten days notice of such motion shall be given to the person, against whom such judgment is to operate,

CHAPTER XCVI.

An Act for the relief of Securities of persons charged with criminal offences.

[APPROVED, JANUARY 6, 1823.]

Be it enacted by the General Assembly of the state of Indiana, That in all cases of surety for the appearance of persons charged with criminal offences before any court, the security or securities of such person, may at any time before judgment is rendered upon the scire facias, to shew cause why execution should not issue, seize and surrender him to the sheriff of the county, wherein the recognizance shall be taken, and it shall be the duty of such sheriff on such surrender, and on the delivery to him of a certified copy of the recognizance, by which such security or securities are bound, to take such person into custody, and by writing acknowledge the surrender aforesaid, and thereupon the said security or securities shall be acquitted and discharged of such recognizance.

Securities of
persons charg-
ed with crimi-
nal offences,
may seize and
surrender
them to the
sheriff.
Sheriff's duty.

Securities re-
leased.

CHAPTER XCVII.

An Act incorporating Congressional Townships, and providing for Public Schools therein.

[APPROVED, JANUARY 31, 1824.]

Be it enacted by the General Assembly of the state of Indiana, That the inhabitants of each congressional township, being either freeholders or householders at the notice given by any three of such inhabitants set up for twenty days, at three of the most public places in such township, shall meet at the section reserved by congress for the use of schools, or at some place convenient thereto; and if there be present at such time and place twenty inhabitants of such township as aforesaid, they shall proceed to elect,

Inhabitants of
congressional
township, may
meet and elect
three trustees.

Schools Public.

Body corporate.

Elections triennial on the first Monday in April.

Trustees give bond.

Take oath.

Lands reserved, vested in the corporation.

Sale, on what conditions made.

by ballot, three persons of their township as trustees, who shall be freeholders; and upon filing a certificate in the clerk's office of the proper county, that such election was held, in conformity to the provisions of this act, containing the names of the persons elected as trustees, authenticated by the affidavit of the clerk of such election attached thereto, the inhabitants shall be a body corporate and politic under the name and style of township school, No. , range

, as designated in the United States' survey, with powers and liabilities similar to corporations in the general, and subject to the rules and regulations hereinafter limited, and which may from time to time be limited by subsequent legislative acts; and triennially thereafter, on the first Monday in April in each incorporated township as aforesaid, there shall be held an election, at the notice and under the superintendence and direction of the trustees in office, and in case of a vacancy by death, resignation, removal, or otherwise, the remaining trustees shall order an extra election to fill the same, which election shall be conducted in the same manner as prescribed for regular elections; and the person so elected to fill such vacancy, shall serve during the time his predecessor would have had to serve, had his office not been vacated.

SEC. 2. Said trustees shall, previously to entering upon the duties of their office, severally give bond and security to be approved of by the circuit court of the proper county, in the penalty of one thousand dollars, conditioned for the faithful performance of their trust; which bond, (with the certificate of the presiding judge of the circuit, or in his absence, the two associates endorsed thereon, that the security therein named has been duly approved of by such court) shall be filed in the clerk's office of such county; upon which an action may be had and maintained, by and in the name of such corporation, for the benefit of the same, for a breach of the conditions thereof, similar to actions authorized to be had upon other official bonds, and such trustees shall, moreover at the same time take an oath or affirmation, for the faithful and impartial discharge of their duties as such, according to the best of their abilities, and for the best interests of such corporation; and they shall hold their office, for and during the above period of three years, and until successors are duly elected and qualified.

SEC. 3. That the lands reserved by congress for the use of schools, in each congressional township, shall be vested in the corporation thereof, and such corporation, through and by their said trustees, may dispose of all such lands, gifts or donations, made or reserved for the use of township schools, in such manner as may seem most conducive to the best interests thereof; except that no sale of the fee simple of any such reserved lands shall be made, nor shall any lease

Schools Public.

thereof be given or granted upon any other condition, than that of forfeiture by the lessee, upon his failing for one whole year to perform the conditions of such lease or any part thereof.

SEC. 4. Said trustees shall have power to appoint a clerk Clerk & treasurer, together with such other officers, as may be provided for by this act, and also to make such by-laws and ordinances, as may by them, be deemed expedient for the regulation and benefit of township schools: *Provided*, the same are not contrary to the provisions of this act.

SEC. 5. The trustees aforesaid shall, within one month after their election, proceed to divide the township, for which they shall have been elected, into such number of school districts, as will be necessary for the inhabitants School districts, particularly describing the bounds of each, and in such manner, as to include all the territory contained in such township, in one or other of such districts; and upon doing so, shall also appoint three sub-trustees in each school Sub-trustees, district so formed, whose duty it shall be after receiving a how appointed written notification of their appointment as such, containing a plain and full description of the bounds of their respective districts, signed by such township trustees, and attested by their clerk, to appear before some person duly authorized to administer oaths, and severally take an oath or affirmation, faithfully to perform the duties of their appointment according to the best of their skill and ability. Their oath.

SEC. 6. The above named sub-trustees shall, within ten Duties days after their appointment, proceed to call a meeting of all the inhabitants, who may be freeholders and householders, within the bounds of their respective school districts, at some convenient place within the bounds thereof, as near the centre as can be; and after making known to such meeting the law on the subject of township schools, shall proceed to take the sense of such meeting, by *ayes and nays* in writing on the question, whether they will or will not support a public school for any number of months, not less than three in each year, on the plan herein proposed, and such sub-trustees shall transmit a concise copy of such decision, to the clerk of the corporation, whose duty it is hereby made to record the same, in a book to be kept by him for that and other records, to which he shall make out and keep a fair index; and if upon examination it appear that a majority of If a majority of householders in such school district, who are either freeholders or householders, are in favour of supporting such school, they shall next determine upon a site suitable for a school house, as near the centre of such district as possible, taking into view the convenience to water, fuel, and health, and as soon as a site may be determined on, by a majority of such inhabitants, the trustees of such school district, shall appoint a time for the inhabitants of such district to meet,

Able bodied persons to work at school house, one day in each week.

Description of school house.

Sub-trustees keep entry of their proceedings.

Report to the clerk of the corporation.

and commence the building of a suitable school house, for the accommodation of as many pupils, as may probably at any time attend such school; said house to be built of brick, stone, hewn timber, or frame, according as a majority of such inhabitants may agree upon, the building and completion of which shall be superintended and conducted by such sub-trustees. Every able bodied male person of the age of twenty-one years and upwards, being a freeholder or household-er as aforesaid, residing within the bounds of such school district, shall be liable equally to work one day in each week, until such building may be completed, or pay the sum of thirty-seven and a half cents for every day he may so fail to work; and every person being so liable and failing or refusing, after being duly called on by such trustees for that purpose, either to perform the work by himself or sufficient substitute, or pay the equivalent aforesaid, shall after the third failure or refusal so to do, be sued by such trustees, before any justice of the peace of the proper township, and on judgment being obtained against such delinquent, such trustees may sell, transfer, or dispose of the same for any materials necessary, for the carrying on of the said building: *Provided*, that such delinquent, shall have the privilege of discharging the amount of such judgment, previously to any assignment, sale, or transfer thereof, by furnishing for the use of such building, such materials, as the trustees will receive at cash price: And *provided moreover*, that the said trustees shall always be bound to receive at cash price, in lieu of any such labour or money as aforesaid, any plank, nails, glass, or other materials, which may be needed about said building.

SEC. 7. That in all cases, such school house shall be eight feet between the floors, and at least one foot from the surface of the ground to the first floor, and finished in a manner calculated to render comfortable the teacher and pupils; with a suitable number of seats, tables, lights and every other thing necessary for the convenience of such school; which shall be forever open for the education of all children within the district without distinction.

SEC. 8. That such sub-trustees shall keep a just and regular entry of all their proceedings, together with a list of all the inhabitants by name, within their respective districts, noting in a separate and distinct column, such as are freeholders, the quantity of land held by each, how much of each person's land is improved, as also the number of children between the ages of five and twenty-one years, and make report thereof to the clerk of the corporation, at any time when required so to do, which shall be filed and kept by such clerk, for the purpose of being referred to when necessary; and the inhabitants of such district are hereby required, when called on, by such trustees for that purpose, to

furnish true statements of all such matters, under the pen-alty of forfeiting five dollars for every refusal or false state-ment, knowing the same to be false.

SEC. 9. That in all cases, not expressly herein provided for, the sub-trustees shall act under the direction of the township trustees, and shall be accountable to them for any mal-conduct in the discharge of the duties hereby assigned them, and in case of any complaint being made to the township trustees, or the clerk in vacation by two or more of the inhabitants of any school district, charging any sub-trustee with mal-conduct in the discharge of his duties as such, it shall be the duty of the clerk to notify such trustee so implicated, to attend at the next meeting of such township trustees, and answer to the matters and things whereof he stands charged; which notice shall be directed to and served by some constable of the county, or any other person the said clerk may appoint for that purpose, who shall make due return thereof accordingly; and if upon a hearing of the case, it appear that such charge or charges are satisfactorily supported by good and sufficient proof, and that the matters so alleged and proved, are likely to produce serious consequences or injury to the district or party com-plaining, said sub-trustee shall be dismissed from office by the township trustees, and be liable to a prosecution for mal-conduct, in any court of competent jurisdiction, at the suit of such township trustees, by and in the name of the corporation: but if such charges, in the opinion of such township trustees, should not be sustained, the party com-plaining, shall forfeit and pay, for the use of such corpora-tion, the sum of five dollars, to be recovered before any jus-tice of the peace of the proper township.

SEC. 10. When any such school house shall be finished, School house finished, to be examined by township trustees. the trustees of the district shall notify the township trustees thereof, who shall immediately repair to the place and ex-a-mine such school house, numbering and naming the same; and the first school house that shall be completed in such township, shall have preference in number, and the others in the order in which they shall be finished, which number and name shall be recorded in the record book of the town-ship, by the clerk thereof, and the said township trustees shall, then and there, determine whether or not the said house is in good order, and fitted for the reception of the school, and if they should determine it not to be, they shall thereupon give such further directions concerning it, as to them may seem necessary and proper; and thereupon the said district trustees shall forthwith proceed to make such amendments, in the same manner as above directed, for the building of such house, and all repairs, that may be needed from time to time, shall be made in like manner, by and at the direction of the township trustees.

Subject to the direction of the township trustees.

May be dis-missed from office.

Inhabitants of school districts to determine the mode of taxation, & the term of employing the teacher.

District trustees to employ a teacher.

Teacher must be examined by the township trustees.

Teacher keep list of the scholars each day of the term, &c.

Clerk of corporation to make out exact apportionment of funds among the school districts.

SEC. 11. That so soon as any district shall have a house in readiness, and are desirous of having a school taught therein, the trustees of such district shall call a meeting of the inhabitants thereof at such school house, and take the sense of such meeting, whether they will suffer any portion of the tax for the support of such school to be raised in money, and if so, what proportion, and the term of time they may wish to employ a teacher; and said trustees shall transmit in writing, a copy of such determination to the clerk of the corporation, to be by him recorded amongst the records and proceedings of such corporation.

SEC. 12. That so soon as the district trustees shall have performed the duties enjoined on them by the tenth section of this act, they shall proceed to employ a teacher on the most advantageous terms, that they can, contracting to make payment at the expiration of the term contracted for, in such articles, and otherwise in such way and manner, as may comport with the decision and determination of the inhabitants of such district, as provided for in the tenth section of this act; a copy of which contract, the said trustees shall forthwith transmit in writing to the clerk of the corporation aforesaid, to be by him recorded as aforesaid, and such recorded contract, shall thenceforth be binding upon all the parties concerned: *Provided however,* that no person shall be employed as a teacher as aforesaid, until he shall produce the certificate of the township trustees, that they have examined him touching his qualifications, and particularly as respects his knowledge of the English language, writing, and arithmetic, and that in their opinion, he will be an useful person to be employed as a teacher in said school.

SEC. 13. It shall be the duty of every teacher so employed, to keep a regular and just entry of all the scholars, that attend such school each day of the term, and at the close thereof, he shall divide the sum total of all the attendance of all his pupils, by the number of teaching days in such term, and certify the same to the district trustees, who shall transmit a copy of said certificate to the clerk of the corporation, who shall compare all the certificates of the several districts in said township, and make out the exact proportion they bear to each other, having reference to the time each district have supported their school, the number of pupils taught therein, and give to each board of district trustees, a draft upon the treasurer of the corporation, for the proportion so made out to each district, of all money or property in his hands, arising from the rents, issues, and profits of the reserved section of land in such township, for the use of schools; which draft shall be a sufficient voucher for such treasurer.

SEC. 14. That if it be found that the money or property in the treasurer's hands, covered by such draft, be not suf-

ficient to fulfil the contract of such district trustees, with their teacher as authorized by the preceding section of this act, it shall be the duty of the ~~* * * * *~~ to bring suit in the name of the corporation, against such defaulter, before the proper court or justice of the peace having jurisdiction, and collect the same, in the same manner other debts are collected; and when judgment is obtained therefor, the same may be transferred by the trustees of such corporation, to and for the benefit of any clerk, teacher or other person having demands against the same, in satisfaction thereof.

+The following clause in the engrossed bill, was omitted in the enrolled bill.—“Township trustees to levy a tax upon each freeholder in such district, in proportion to the quantity of improved land by him or her owned or possessed, sufficient in the whole to fulfil such contract, and to pay their proportion of any contingent expenses to the clerk and other officers, as to them may seem just and reasonable; and such tax shall be collected in the following manner to wit: The district trustees shall send a written notice to each person so taxed, of the amount due from him or her, what part (if any) must be in money, the articles of property, that will be received, together with the price, that will be allowed for each article, by measure, number or weight, (as the case may be) and when and where the same must be delivered; and if default be made by any person so notified, the said trustees shall forthwith proceed”

CHAPTER XCVIII.

An Act to establish a Board of Trustees for the promotion of Schools and Education in Clark's Grant.

[APPROVED, JANUARY 28, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the circuit court of Clark county be, and they are hereby authorized and required, at the first term of said court after the taking effect of this act, to lay off the tract of country commonly called Clark's Grant, into seven school districts, as nearly equal as practicable, numbering the same, and order such districting to be entered on the records of said court, and by their order to the sheriff of said county of Clark, direct him to notify the qualified voters resident in each of said districts, by at least three manuscript advertisements, to meet at such time and place in each district, defining the limits thereof, as said court may order and direct, then and there to elect by ballot, some suitable person resident therein as a trustee: the said court shall also appoint some suitable person in each of said districts, as inspector of such election, who with two assistants and a clerk to be chosen by him, shall under their oath, hold and make return of such election, to the clerk's office

Circuit court to lay off Clark's Grant into school districts.

Trustee to be elected for each district.

Schools in Clark's Grant.

of said court, in such manner, and at such time, as said court may order and direct.

Bond.

SEC. 2. The trustees, when elected as aforesaid, shall, within twenty days after the time appointed for the return of such election, enter into bond with sufficient security to be approved of by the clerk of the circuit court aforesaid, made payable to the state of Indiana, to and for the use and benefit of the people of said grant, in the penal sum of five thousand dollars each, conditioned for the faithful performance of his duty, as trustee as aforesaid, and for the true accounting for and paying over all monies, or other commodity, which may come into his hands in consequence of said appointment, in such manner as may be directed by law.

Term, 5 years.

SEC. 3. The trustees when so chosen and qualified as aforesaid, may hold their appointments for five years, and until others are chosen, and give bond as aforesaid, unless removed by an order of the circuit court aforesaid, for improper conduct as such, on a suggestion or petition of five respectable citizens of the proper district, when said court may think it necessary; and in case of removal of any trustee, elected under authority of this act, or refusal to serve, the remaining trustees shall order an election to fill such vacancy, and a return thereof shall be made, and qualification of the person elected, shall be had in like manner, as provided in the first section of this act; and at the expiration of each term of five years from the day of the first election, a new election for trustees shall be held, notice of which shall be given by the sheriff of the county of Clark aforesaid, by advertisements, in each district, as provided in the first section of this act, and if no inspector be appointed, or if appointed shall fail to attend at the place of holding the election, in any of said districts, by the hour of ten o'clock, on the day of election, the voters present, may choose a suitable person to act as inspector of such election.

Vacancy, how filled.

SEC. 4. Said trustees or a majority of them, after giving bond as aforesaid, shall meet at Charlestown, in the said county of Clark, on some day most convenient to them, within three months after their election, and shall by ballot, elect one of their number as president, who shall take his seat and form a board, which board, when so formed, shall proceed to appoint some suitable person as clerk to their board, who shall give bond and security to said president and trustees, in the sum of five hundred dollars, conditioned well and truly to discharge the duties of his office, and shall keep a book, in which a correct entry of all meetings and proceedings of said trustees shall be made, together with a copy of the record of said circuit court, respecting the said school districts, which said record book shall be kept by said clerk at

Trustees meet at Charlestown & form a board.

Schools in Clark's Grant.

Charlestown, to be open for the inspection of persons interested therein.

SEC. 5. After the said trustees shall have so as aforesaid, formed themselves into a board, and recorded the same on their record book, they shall be to all intents and purposes a body corporate and politic, under the name and style of *Body corpor. "The President and Trustees for the promotion of schools rate.* and education in Clark's Grant," until the legislature may deem it expedient to vest their trust in other hands; and by that name are hereby made able and capable to all intents and purposes whatever, both in law and equity, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court or place whatever, and to make, have and use a common seal; and *Seal.* for the purpose of promoting schools and education within the districts of said Clark's Grant, shall be able and capable to all intents and purposes, both in law and equity, to have, purchase, receive, possess and retain to them and their successors in office, lands, tenements, rents, issues and profits, *Hold lands,* goods and chattels, bank, treasury or other stock, monies &c. and effects of any kind or nature whatever, and the same at pleasure to transfer and dispose of for the purposes aforesaid.

SEC. 6. The said president and trustees shall hold all their sittings, at the said town of Charlestown, shall meet *Meet once a year.* once a year, and at such other times as they may resolve or be requested by the president or two trustees, and shall at their first meeting, or as soon thereafter as expedient, determine by ballot, whether in their opinion, the purposes for which six sections and a half of land, located in pursuance of an act of congress, entitled "An act authorizing the location of certain school lands in the state of Indiana," approved the 7th day of May, 1822, situate in the district of lands offered for sale by the United States at Brookville, would be best advanced by the sale thereof, and the proceeds vested in lands within the limits of Clark's Grant, or in the purchase of stock, in the funded debt or bank of the United States, or loans to individuals, or by giving leases on the land now selected, and the determination so made, shall be entered on their record book; and if it be determined to dispose of those lands, and vest the proceeds in either manner before mentioned, they shall authorize the president of their board, to make application in writing, under the common seal of the corporation, attested by their clerk, to the commissioner of the general land office of the United States, for a patent to them, the said president and trustees, in the *Determine the disposition proper to be made of school lands.* said corporate name and capacity, and to their successors in office, for the said six sections and a half of land aforesaid, and shall therewith forward a copy of this act.

SEC. 7. And when the said president and trustees shall

Application for a patent.

Trustees point out the manner of selling land.

Deed.

Vest proceeds of sale, in lands in Clark's Grant Bank of U. S.

School fund.

Lease lands.

Proceedings against trustees for neglect of duty.

Render ac- count.

Expenses, how paid.

have received a patent as aforesaid, for the said lands, they shall by ordinance, point out the manner and way of selling the same, for the best possible price, but the same nor any part thereof, shall not be sold for a less price than one dollar and twenty-five cents per acre, and a copy of such ordinance shall be recorded on the records of Clark county; and the said trustees on a sale thereof, shall make to the purchaser or purchasers, a deed in their corporate capacity, and may, at their discretion, vest the proceeds of such sale, in the purchase of lands within the limits of Clark's Grant, to which good and sufficient titles can be made, or in the purchase of stock, in the public funded debt, or bank of the United States, or loan the same to individuals, upon good real security by mortgage or deed of trust. And the proceeds of the sale of said lands, shall forever be and remain a permanent fund, for the promotion of schools and education within said Grant, the interest and profits only, arising therefrom, to be appropriated for that purpose, in such manner, as the said president and trustees may direct, which may also be put at interest, until the amount be sufficient to authorize the distribution thereof.

SEC. 8. The said president and trustees shall have power to lease all lands, which have been or may hereafter be granted or conveyed, for the purposes of promoting schools and education within said Grant, on such terms, as they may deem proper and expedient, and to prosecute for trespasses or waste thereon, and do and perform such other matters and things, in relation thereto, as the trustee of other school sections is or may hereafter be authorized by law to do, and agents under them to appoint, and at pleasure to remove.

SEC. 9. The violation of any of the duties required of said trustees, by this or any future act, by which the aforesaid fund shall sustain loss or injury, shall be deemed a violation of the condition of their bond, and suits shall be sustained by bill in equity in the Clark circuit court, against the trustee guilty of such violation and his securities; and the said court shall have superintendence over the conduct of said trustees, and require them to render an account of their proceedings, as often as they may deem it necessary, and enforce them to deliver over to their successors in office, the funds and documents belonging to, or concerning their said trusts.

SEC. 10. The necessary expenses, for carrying into effect the provisions of this act, shall be paid out of the county treasuries of Clark, Floyd, and Scott counties, in proportion to the quantity of Clark's Grant within each of said counties, to be allowed by the board of county commissioners of the proper county, and paid by the treasurer, on the order of the president of said board of trustees.

CHAPTER XCIX.

An Act authorizing the Seizure of Boats and other Vessels for Debt.

[APPROVED, JANUARY 22, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That boats and vessels of all descriptions, built, repaired and equipped within the jurisdiction of this state, shall be liable for all debts contracted, by the master, owner or consignee thereof, on account of work done, supplies or materials furnished by mechanics, tradesmen or others, for, on account of or towards the building, repairing, fitting, furnishing or equipping such boats or vessels; and the debts so contracted, shall be a lien on such boats or vessels, their tackle, apparel and furniture; and shall have preference to any and all other debts due from the owners, except mariners and boatmen's wages.

SEC. 2. That any person having a demand contracted as before mentioned, against any such boat or vessel, may have a warrant, to be issued by any justice of the peace, judge or court, having jurisdiction within the county in which such boat or vessel may be, authorizing and directing the seizure and detention of the same, with the tackle and apparel, by the sheriff or constable, upon affidavit made of the truth and justice of the demand, to be left with the officer or court issuing such warrant, and such attachment, if the demand be within the jurisdiction of a justice, shall be returnable to the justice who issued it, otherwise the same shall be returnable to the circuit court of the county.

SEC. 3. That upon the return of such warrant, all persons having demands, of the description before mentioned, may join in a declaration against such boat or vessel, briefly setting forth their demands for work done or materials furnished, and whether at the request of the master, owner or consignee of such boat or vessel, and averring demand and refusal of payment, to which declaration shall be annexed the particulars of the demands, and proceedings shall be had, and judgment rendered as in other cases; and if in any case, all the demands exhibited before any justice of the peace, before judgment rendered by him, upon any such warrant, issued by and returned before him, shall exceed the extent of his jurisdiction, he shall certify the proceedings to the circuit court of his county, where the same proceedings shall be had thereon, as if originally returned into said court.

SEC. 4. That mariners and boatmen for their wages, Boatmen's may proceed under the provisions of this act, and shall be wages, entitled to all the benefits thereof.

SEC. 5. That if the master, owner or consignee, shall before final judgment, give bond with security to be approved Owner may of by the clerk, justice or judge who may have issued such give bond and

Boats liable,
&c.

Proceedings.

Declaration.

Proceedings,
when certified
to the c. court.

Sheriffs and Coroners.

have the boat
discharged.

warrant, under which any boat or vessel may be seized or detained as aforesaid, conditioned to satisfy and pay all the demands pending against the same, which shall be adjudged to be due and owing, on the determination thereof, or pay the said demands, together with the costs of the proceedings, such boat or vessel shall thereupon be discharged from such arrest and detention.

CHAPTER C.

An Act to provide for the commissioning of Sheriffs and Coroners, and to regulate their duties.

[APPROVED, JANUARY 7, 1824.]

Commissions
to be forward-
ed to the clerks

Clerk to notify,
etc.

Sheriff's bond

Bonds record-
ed and filed.

Clerk trans-
mit a certified
copy of bond,
to the office of
secretary of
state.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That it shall be the duty of the governor, as soon as the nature of the case will admit, to commission the several persons returned as elected for sheriffs or coroners in the several counties in this state; which commissions he shall cause to be forwarded to the clerks of the circuit courts in the several counties, where such sheriffs or coroners shall respectively reside.

SEC. 2. It shall be the duty of the clerk of the circuit court in each county, on the receipt of a commission for sheriff or coroner, to give notice thereof to such person so commissioned, to come forward and give bond and security for the faithful discharge of the duties of his office.

SEC. 3. It shall be the duty of the clerk of the circuit court, to take of the sheriff elect, a bond with two or more securities, to be approved of by the two associate judges, in the sum of five thousand dollars, payable to the state of Indiana, conditioned for the faithful discharge of his duty, and for the safe keeping and delivering over according to law, to the proper persons, all sums of money, that may come into his hands by virtue of his office; and of the coroner elect, in the sum of two thousand dollars, payable as aforesaid, for the faithful discharge of his duty, and for the safe keeping and delivering according to law, to the proper persons, all sums of money that may come into his hands by virtue of his office, which bonds shall be forthwith recorded in the recorder's office, and filed in the clerk's office of the county in which they are taken; and it shall be the duty of each of the clerks of the circuit courts, on the same being filed in his office, to transmit a certified copy thereof, to the office of the secretary of state, to be by him preserved. And in all motions or suits to be made or brought upon such bond, against any sheriff or coroner, in the name, or for the use

Sheriffs and Coroners.

and benefit of the state, or any individual thereof, such copy filed as aforesaid, shall be sufficient evidence of the existence of such bond, and the same proceeding may be had thereon, as on the original bond.

SEC. 4. The clerk of the circuit court, is hereby authorized to administer to every person, who is commissioned sheriff or coroner, after such person has given bond and security as required by this act, the several oaths or affirmations required by the constitution and laws of this state, which he shall certify on the back of such commission, and file a copy of such certificate in his office, which commission so certified, shall be sufficient authority for the person thus qualified, to perform all the duties that belong to his office.

SEC. 5. Sheriffs and coroners shall be commissioned to serve two years from and after the time of their election, Term, 2 years, and until their successors are chosen and qualified.

SEC. 6. Whenever the general assembly shall lay off a new county, the governor shall appoint and commission a sheriff and coroner to act as such, until the next general election, and until successors are chosen and qualified. Governor ap- point a sheriff and coroner in new counties.

SEC. 7. Hereafter when the office of sheriff or coroner of any county shall become vacant, by death, resignation, removal from office, neglect or refusal to give bond and security as required by this act, or refusal to qualify, it shall be the duty of the governor, to appoint and commission some suitable person, resident of the county, to fill such vacancy, until the next general election, and until a successor be duly elected and qualified into office. Vacancies, how filled.

SEC. 8. When appointments shall be made of sheriffs and coroners in any new county, the person so appointed shall give bond and security, in the sum and manner pointed out by the governor: all persons appointed to fill vacancies in and to fill va- said offices, shall give bond and security, and take the same oath, as in other cases of sheriffs or coroners; and it shall be the duty of the governor, at the time he shall make any appointment as aforesaid, to issue a writ of election, directed to the sheriff of the proper county, requiring him to give ten days notice of the election of such officer at the next general election: *Provided*, where any vacancy as aforesaid shall take place in any county, immediately preceding a general election, and when no special appointment shall have been made, it shall be the duty of the sheriff or coroner, as the case may be, to give notice of the same, and to cause a poll to be opened for the filling of such vacancy.

SEC. 9. The coroner shall perform the duties of sheriff in all cases, where the sheriff is interested or prejudiced, and also in case of vacancy by death, resignation, or otherwise in the office of sheriff, the coroner shall perform the duties of such office, until a sheriff is appointed or elected, and qualified according to the provisions of this act. Coroner in certain cases shall perform the duties of sheriff.

Sheriffs and coroners, their duties.

Deputy.

Sheriffs out of office may collect taxes, &c.

Their acts legal.

Sheriffs shall serve and return process of supreme court

May call persons to his assistance.

SEC. 10. That it shall be the duty of each and every sheriff and coroner to keep the peace, by causing all offenders against law in their view to enter into recognizance with securities, to appear at the next circuit court in the county, on the first day of the term thereof, and in case of refusal, to commit to the common prison; which recognizance shall be certified and returned by the sheriff or coroner, on or before the first day of the next term. It shall also be their duty to quell and suppress affrays, riots and insurrections, for which end they shall and are hereby authorized and empowered to call to their aid the power of the county. They shall pursue and commit to jail, all felons and traitors; they shall execute all warrants, writs and process, which by law shall appertain to the duties of their office, and which shall be directed to them by legal authority. The sheriff shall duly attend to all courts of record, at their respective terms or sessions in his county, shall have the custody of the jail thereof, and shall also do and perform all other duties that are or shall be enjoined on him by law; and sheriffs may transact any part of their official duties by deputy, being accountable for the acts of such deputy.

SEC. 11. That the sheriffs, who may have resigned, or whose term of service may have expired, shall be and they are hereby authorized to proceed in the collection of taxes, fee-bills, fines and executions which were due them at the time their said offices were vacated, under the same rules and regulations by which they were authorized by virtue of their respective commissions; provided such authority shall not extend to a longer term than two years.

SEC. 12. That all acts of sheriffs whose term of service has expired, by resignation or otherwise, in collecting taxes, advertising real estate for sale for taxes, sale thereof, making deeds or giving certificates of real estate, to the purchasers thereof, or sale for the non-payment of taxes, shall be legal, and are hereby legalized in all respects, as though the same had been done by their successors in office: *Provided*, such collection and sale shall have been conducted in all other respects agreeably to the laws of this state.

SEC. 13. It shall be the duty of the sheriffs in their respective counties, to serve, execute and return all process to them directed by the supreme court, in the same manner, as process issued by the circuit courts, for which they shall be entitled to similar fees.

SEC. 14. Any person or persons called upon by any sheriff or other officer, to assist in the execution of his office, and failing to obey when so called, shall, unless he shews sufficient cause for not obeying, be fined, by any court having competent jurisdiction, on indictment, and being found guilty by a jury, in any sum not exceeding fifteen dollars.

SEC. 15. Every coroner as soon as he shall be notified of

the dead body of any person supposed to have come to his or her death by violence or casualty, found or lying within his county, shall make out his warrant directed to the constable of the township, where the dead body is found or lying, requiring him forthwith to summon a jury of good and lawful men of the said township, not less than fifteen in all, so that twelve may be present, to appear before such coroner, at the time and place expressed in his warrant, and to enquire upon a view of the body, (*name here the person deceased, if known*) there lying dead, how and in what manner, and by whom, he or she came to his or her death; and every constable, to whom such warrant shall be delivered or directed, shall forthwith execute the same, and shall repair to the place, where the dead body is at the time mentioned, and make return of the warrant, with the proceedings thereon, unto the coroner who granted the same; and every constable failing to execute such warrant, or to return the same as aforesaid, shall forfeit and pay the sum of three dollars; and every person summoned as a juror aforesaid, that shall fail to appear, without having a reasonable excuse, shall forfeit any sum not exceeding three dollars; which fine shall be recovered by action of debt, before any justice of the peace in the proper township, and be applied to the use of the county seminary.

SEC. 16. The coroner shall administer an oath or affirmation to twelve of the jurors that shall appear, to the foreman first, in the following manner: "You do solemnly swear or affirm (as the case may be) that you will diligently enquire and true presentment make, how and in what manner, and by whom, A. B. who here lies dead, came to his death, and that you will deliver to me, the coroner of this county, a true inquest thereof, according to such evidence as shall be laid before you, and according to the best of your knowledge: *So help you God.*"

SEC. 17. The other jurors shall swear or affirm (as the case may be) in the following form: "Such oath or affirmation as your foreman hath now taken before you on his part, you and each of you will keep and observe on your respective parts; *So help you God.*"

SEC. 18. The jurors being sworn, the coroner shall give them a charge upon their oaths to declare of the death of the person, whether he or she died of felony or mischance, or accident, and if of felony, who were the principals, and who were accessories, with what instrument he or she was struck or wounded, and so of all prevailing circumstances, which may come by presumption; and if by mischance or accident, whether by the act of man, or whether by hurt, fall, stroke, drowning or otherwise; also, to enquire of the persons, who, if any were present, of the friends of the body, his or her relatives and neighbours, whether he or she

ied of dead body, how to proceed.

Jury.

Oath of Jury.

Proclamation

Witnesses.

Witnesses
may be recognized.

Verdict.

In case of felonious homicide, coroner shall inform a justice.

Coroner unable to attend, justice may hold inquest.

was killed in the same place, where the body was found; and if elsewhere, by whom and how the body was brought thence, and of all other circumstances relating to said death; and if he or she died of his or her own felony, then to enquire of the manner, means or instrument, and of all other circumstances concerning it.

SEC. 19. The jury being charged, shall stand together, and proclamation shall be made for any persons, who can give evidence to draw near, and they shall be heard.

SEC. 20. Every coroner is further empowered to send his warrant for witnesses, commanding them to come before him to be examined, and to declare their knowledge concerning the matter in question; he shall administer an oath or affirmation to them in the following form: "You do solemnly swear or affirm that the evidence you shall give to the inquest, concerning the death of A. B. here lying dead, shall be the truth, the whole truth, and nothing but the truth: *So help you God.*"

SEC. 21. The evidence of such witness shall be in writing, subscribed by them, and if it relates to the trial of any person concerned in the death, then shall the coroner bind such witness or witnesses by recognizance, in a reasonable sum, for their personal appearance at the next circuit court, to be holden within the same county, there to give evidence accordingly; and commit to the common jail of said county, any witness or witnesses refusing to enter into such recognizance; and shall return to the same court, such inquisition, written evidence and recognizance by him taken; and the jury having viewed the body, heard the evidence, and made all the enquiry within their power, shall draw up and deliver to the coroner, their verdict upon the death under consideration in writing under their hands and seals.

SEC. 22. Upon an inquisition found before any coroner, of the death of any person by the felony or misfortune of another, he shall speedily inform one or more of the justices of the same county thereof, to the intent, that the person killing or being in any way instrumental in the death, may be apprehended, examined and secured in order for trial.

SEC. 23. In every case where the coroner shall be absent from the county, or unable to attend, it shall be lawful for any justice of the peace of the proper township, to hold an inquest over any dead body, which justice shall proceed in all respects, as coroners are directed to do by the foregoing provisions.

CHAPTER CI.

An Act for the better management of the State Prison, and for other purposes.

[APPROVED, JANUARY 31, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the board of managers and agency, together with the whole system of managing said prison, heretofore authorized by law, be and the same are hereby abolished, Board of managers and agency abolished. and that hereafter the said prison and all things relative thereto, shall be managed, governed and controlled under the rules, directions, limitations and restrictions in this act hereafter set forth.

SEC. 2. The person to whom the management, government and control of said prison shall be entrusted as aforesaid, shall be in fact, law and equity, known by the name and style of "the superintendent of the state prison of Indiana," and by and under that name and style, shall have full and complete power and authority, to make all and all manner of contracts, which may be necessary at any time and place to be made, for the management, control and carrying on of said prison and its concerns, and to receive and pay out all monies, buy and sell, appoint keepers, and them again dismiss at his pleasure, employ guards, and them again dismiss at his pleasure, take charge of and keep secure the convicts, and in short, to do and perform all, and all manner of acts necessary to be done and performed at all times, in and about the proper management, control and government of said prison; and under such name and style, for and on behalf of the state of Indiana, shall be able to sue, plead and answer in any court either of law or equity, fully and amply to all intents and purposes. *Superintendent, his powers and duties.*

SEC. 3. Such superintendent shall be appointed by the governor of the state of Indiana, at all times whenever the said office of superintendent shall in any way become vacant; and such superintendent when so appointed, shall hold the appointment during the will of the governor of the state of Indiana, and no longer; and the governor of the state of Indiana, is hereby authorized to dismiss any such superintendent, at any time when he pleases, and fill the vacancy occasioned thereby, with whomsoever he pleases, without being bound to render any reason therefor, unless called on by the general assembly of the state for such reason. But it is hereby made the duty of the governor of the state of Indiana, always and at all times to keep said office of superintendent filled with some person adequate and proper to discharge the duties thereof to advantage.

SEC. 4. After the governor of the state of Indiana shall have so appointed any person to fill the office of superinten-

State Prison.

Bond.

dent of said prison, such person before he can enter upon the duties of such office, must give bond in the sum of ten thousand dollars, payable to the state of Indiana, with six freehold securities, such as the governor may approve of; which bond shall be taken by the governor, attested by the secretary of state, and filed in the office of the secretary of state, and be conditioned for the true, faithful and honest performance of all the duties enjoined on such superintendent at all times, according to the true intent and meaning of this statute, and all others which may hereafter be made respecting the said prison and the duties of such superintendent. And such superintendent shall also take an oath (or affirmation,) faithfully to perform such duties; which oath must be endorsed on the back of his appointment, and must be administered by the secretary of state, who is hereby authorized to all intents and purposes to administer the same; and the secretary shall also endorse such oath, (or affirmation,) on such superintendent's bond; and if such superintendent shall break said oath or affirmation, he shall be liable to be indicted, convicted and punished for perjury.

His further duties.

SEC. 5. It shall be the duty of such superintendent, to be at all times at, or near said prison, unless called away on the business thereof; and receive and pay out all monies, make all and all manner of contracts, and daily attend to, and inquire into the state of the prison and prisoners, and their health, food, clothing, bedding and medicine; attend to and see that their rooms and the prison in general are daily cleansed and aired in the best possible manner, and thoroughly washed and scrubbed out, whenever in the least necessary, and attend to and see that the prisoners clothes are always clean, and attend to and see that the provisions and water used by the prisoners, are both clean and wholesome and properly prepared for use; and attend to and see that each prisoner is constantly employed in the best possible way so as to produce gain to the state, and cause to be carried on all the mechanical arts which can be carried on to any advantage, and with the proceeds of the prison, purchase the necessary bedding, clothing, provisions, medicine, and also with the proceeds of said prison, purchase the necessary raw materials and tools for the prisoners to work with; and as fast as there is any description of manufacture or product of said prison ready for market, have the same forthwith thrown into the best market, and to the best advantage so as to produce a speedy sale and good price, through the medium of commission merchants or otherwise; and safely and securely at all hazards, keep all the prisoners safely, so that they cannot escape, and in short, do and perform at all times, all and every act necessary to be done and performed for the benefit of the said

State Prison.

prison and the state of Indiana; and shall see that the buildings and walls, and other property of said prison, shall not receive any unnecessary injury; and shall always keep the same in the best possible repair, and shall cause the prison yard within the walls to be cleaned off and set in blue grass, and always kept clean, and well set with blue grass, except the necessary walks, which he shall cause to be well gravelled, so as to prevent the same from ever being muddy; and shall at all times employ good medical aid for any such prisoner or prisoners, if the same may be necessary, and pay for the same out of the proceeds of the prison; and in all things attend to the internal police of the prison, so as to secure the health of the prisoners.

SEC. 6. The superintendent shall keep a complete, full, sufficient and well bound set of books, in which he shall ^{Keep books,} daily enter all the transactions of the prison, and keep the accounts thereof daily posted up, agreeably to the best plan of book-keeping, at all times shewing the balance of each separate account; and shall on the first Mondays of April, July, October and January, annually transmit to the office of the secretary of state, a certified copy of the accounts of the prison books, shewing all the items and dates, the amount of stock, tools and personal property on hand of every description, and the money on hand, the amount of debts due to said prison, and the amount of debts against said prison, together with a full view of the concerns of said prison; which said quarterly returns, shall be carefully filed away in the office of secretary of state, for the inspection and use of the governor and general assembly when necessary.

Transmit to
the office of
secretary of
state, ac-
counts of the
prison.

SEC. 7. The governor of the state of Indiana is hereby required to see that the concerns of the said prison are at all times, well, ably and properly managed; and to enable him to do so, he is hereby authorized and empowered, at any time when he may deem the same necessary, to appoint one or more men (not exceeding three) to visit said prison, with full authority to examine into all, and particularly the concerns, books and departments of said prison, and with full power to send for men and papers and books, swear witnesses and to take down evidence, and when so done, to make a complete record of all the proceedings, information and state of the prison and prisoners, together with their opinion respecting the matters submitted to them, and lay the same before the governor for his information; and the governor may, if he shall deem it expedient, attend any such examination in person.

Governor may
appoint per-
sons to visit &
examine the
prison.

SEC. 8. The contract made with A. P. Spencer, by the board of managers, is hereby confirmed and made binding on all parties; that is to say, the said A. P. Spencer shall keep the prison and prisoners agreeably to his contract, and at his own

Contract with
A. P. Spencer
confirmed.

expense, (except the pay to Ira Westover, the principal keeper) until the fourth day of August, one thousand eight hundred and twenty-four, at which time the said Spencer shall deliver over the said prison and prisoners, and all the property, and appurtenances thereunto belonging in good order, to the superintendent who may be appointed under this act: *Provided however,* that the said Spencer may, if he chooses so to do, surrender the same sooner, and have his contract rescinded, upon giving the governor ninety days notice thereof: *And provided also,* that such surrender and rescinding shall not in the opinion of the governor, materially injure the interests of the state; nor shall said contract be rescinded so as to relieve said Spencer from any damage or harm done by him, or liability incurred previous to, or at the time of such surrender.

Superintendent appoint his keepers & guards.

SEC. 9. The superintendent who shall from time to time be appointed under the provisions of this act, shall appoint his keepers and guards himself, and them again dismiss at pleasure; and shall pay and find them with board and lodging himself, out of his own funds, and at his own proper charges and expenses, with which neither the state, nor the concerns or property or proceeds of the prison, shall have any connection, inasmuch as the state will and shall hold the superintendent accountable for all things respecting or connected with said prison, its property, concerns and prisoners.

Governor authorized to farm out the prison, or employ a superintendent at a yearly salary.

Term not exceeding three years.

SEC. 10. The governor in appointing a superintendent, shall make the best possible contract he can, respecting the expenses of the same, and to enable him so to do, he is hereby authorized either to farm the same out, or to employ a superintendent at a yearly salary, of not exceeding one thousand dollars per annum, payable out of the proceeds of said prison; and in all cases where the governor shall have an opportunity of farming out said prison to a good advantage to the superintendent, or employing him with the clear gains of the prison, he is hereby authorized to appoint such superintendent, for any term not exceeding three years, reserving the right to dismiss such superintendent at pleasure, as here in this act authorized. But in all cases where the governor is obliged to pay the superintendent out of the state treasury, such appointment shall state on the face of it, that it is during pleasure only, and the salary shall not exceed one thousand dollars per annum, and in all those contracts the governor shall not only have in view, the present pecuniary interests of the state, but also the future prospects of the prison.

Wells & work shops.

SEC. 11. The superintendent shall as soon as possible, cause the necessary wells of water to be dug and walled, and the necessary privies and work shops to be erected in the prison yard, within the walls; and to enable such superin-

tendent to do so, he shall be at liberty to avail himself of the labour of the prisoners and the proceeds of the prison; but such improvement when done, must be done in a good, sufficient and complete workmanlike manner, and be substantial, lasting and convenient, and suited to the purpose, and of good materials.

SEC. 12. The superintendent shall keep a book of large and lasting quality, well bound, with a sufficient index thereto, in which he shall enter the name and trade, or occupation, age, size, complexion and complete description of every prisoner, the day of their entry, and the day on which their time will expire, the offence for which they were committed, in what county they were convicted, and the place of their birth; and shall monthly send a transcript thereof, to the secretary of state, to be filed in his office, for the information of the governor and general assembly; and every superintendent when he shall go out of office, shall deliver to his successor in office, all and singular the books, papers, goods, monies, effects, prisoners, keys and property of any description, name and nature whatever, in good order and repair, without any molestation, hinderance or delay whatever.

Book, of de-
scription of
prisoners.

Superintend-
ent deliver to
his successor
books, &c.

Settlement
with Stephen
Ranney.

SEC. 13. The governor shall immediately on the taking effect of this act, appoint some disinterested person, to proceed to Jeffersonville, and then and there settle with Stephen Ranney on his bond, for building the wall around the state prison, and works therewith connected, and in that settlement, such person shall take into consideration, the true justice and equity of the case; and if on such settlement, such person shall conceive that said Ranney has not in justice received full compensation for what he has done to said walls and the works therewith commenced, such person shall allow said Ranney such further sum, over and above what he has received, as such person may deem just and reasonable; provided such further allowance so to be allowed to said Ranney by such person, shall not, when added to the amount which said Ranney has received, exceed the sum of two thousand five hundred dollars: But if such person shall conceive, that the said Ranney has received as much as in justice he ought to receive, then such person shall deliver to said Ranney his bond, provided said Ranney, will sign, seal and deliver to the state of Indiana, a full receipt, discharge and acquittance, for any claim or claims, he may pretend to have against the state in any way respecting the same.

SEC. 14. Each and every convict who may hereafter be confined in said state prison, and who shall be unable to pay or discharge all the expenses of the prosecution and conviction in the court where such person was convicted, together with all the costs and expenses attendant on the conveyance of

Convict to be
detained until
costs are sa-
tisfied.

such convict to the said prison, such convict shall be confined at hard labour in said prison, after the period for which he or she was sentenced to confinement may have expired, at the rate of twenty-five cents per day, until the whole amount of such costs, and expenses are satisfied; and it is hereby made the duty of such superintendent, to keep a correct memorandum thereof, and pay the amount of such fees to the officers of court, as may appear to be due to them, when required so to do; and shall pay over into the state treasury, the amount of expenses incurred, in conveying such convict to the said prison.

Superintendent to pay costs to proper officer.

CHAPTER CII.

An Act concerning the Stock of Non-Residents running at large in this State.

[APPROVED, JANUARY 26, 1818.]

Whereas, it has been represented to this general assembly, that the citizens of a neighbouring state are in the habit of transporting across the Ohio river, and turning at large into the range within this state, large droves of horses, cattle and hogs, bearing the same mark of the stock of our own citizens, which not only subject them to the great trouble and expense of separating the stock thus mingling together, but to the entire loss thereof: For remedy whereof,

Be it enacted by the General Assembly of the state of Indiana, That if any person or persons, being the owner or possessor of any horse creature or horse creatures, cattle, sheep or hogs, in any of the adjoining states or territories, who shall bring the same within this state and turn the same loose to run at large within the bounds of this state, for the purpose of running at large in the said state, any person or persons feeling themselves aggrieved thereby, may take up the same or any part thereof, at any season of the year, as an estray or estrays, and shall proceed and be governed in all other respects by the laws now in force in this state regulating stray animals: *Provided however,* that nothing in this act shall be so construed, as to prevent citizens of any other state or territory, who is the owner or proprietor of any freehold estate in any county of this state, from turning their stock on the same; and should said stock stray from the same, and be found on the lands of any other person, they shall in nowise be considered otherwise than in the same manner that the property of citizens of this state, which is running at large, are considered: *Provided also,* that nothing in this act shall be so construed, as to prevent

Animals bro't into this state by non-residents, may be taken up as estrays.

citizens of the adjoining states or territories, from bringing into this state, any stock of horses, cattle, sheep, or hogs in time of high water: *Provided,* they remove the same again so soon as the difficulties and dangers occasioned by said high waters subside, on being notified by any citizen of any county of this state, which notice shall be in writing.

CHAPTER CIII.

An Act declaring certain Streams therein named, Public Highways!

[APPROVED, JANUARY 26, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That the following streams shall be considered public highways, to wit: White River, from its mouth to the White River main forks; the West Fork from thence, to the Delaware towns, and the East Fork from thence to the main fork above the mouth of Flat Rock: Muscatituck, from its mouth Muscatituck, to the main forks, the North Fork to the town of Vernon, the South Fork, to the mouth of Graham's Fork: Big Blue Big Blue, river, from its mouth to the town of Fredericksburgh. So much of White Water, as is within this state below the forks White Water, thereof, and the West Fork of said river, to the northern boundary of the county of Fayette. Laughery, from its Laughery, mouth to the point where the state road leading from Lawrenceburgh to Indianapolis, crosses the same. Anderson's Anderson, river, from its mouth to Upton's Shoals. Poison creek, Poison creek, from its mouth, to Cummin's mills; Oil creek, from its Oil creek, mouth, to Aaron Cunningham's mills; Rackoon creek from Rackoon, its junction with the Wabash, to the mills of Brooks, Robbins and Rose; Big creek from its mouth, to James Black's Big creek, mills; Patoka river, from its mouth to Thompson's mills; Patoka. Indian creek, from its mouth to Dickinson's mill: Indian Indian creek, Kentucky, from its mouth to Brooks' mill: Big Sand creek, Indian Kentucky, from its mouth to the forks thereof; Flat Rock, from its mouth, to the mouth of Little Flat Rock; Tanner's creek, from its mouth to Blasdell's mill; and Sugar creek or Rock Rock, river, from its entrance into the Wabash, to Crawfordsville in the county of Montgomery: Fourteen Mile creek, in the county of Clark, from its mouth to Pierce's mill on said creek, which last mentioned creek, shall be kept in repair by the inhabitants of said county, living on or near the same, at such times, and in such manner, as the county commissioners of said county may order and direct, when said commissioners may deem it expedient and necessary: *Provided,* nothing herein contained, shall make it necessary to con-

Tanners creek
Sugar creek.
14 mile creek,

struct slopes in any dams heretofore erected on Patoka river, until it shall be declared necessary by law.

SEC. 2. If any person or persons, shall erect or keep up any milldam or other obstruction, calculated to destroy or injure the navigation of any of the streams aforesaid, every person so offending, shall for every such offence, be fined in any sum not exceeding five hundred dollars, nor less than ten dollars, to be recovered by presentment or indictment, in any court having competent jurisdiction thereof; and if any of the said streams shall be a county line, in that case, prosecution may be sustained in either county. The person so obstructing, shall moreover be liable to the action of any person who may be injured thereby.

SEC. 3. If any person or persons, shall obstruct any stream declared navigable by this act, by felling timber therein, and not removing the same within ten days thereafter, every person so offending, shall for every such offence, on conviction thereof before any justice of the peace of the proper township, be fined any sum not exceeding three dollars.

SEC. 4. Nothing herein contained, shall be so construed as to prevent any person who may have purchased from the United States, the bed of any stream by this act declared navigable, from erecting any dam or mill, which when erected, will be of public utility; if such person shall provide, and at all times when such streams are navigable, keep in repair, good and sufficient locks or slopes, of dimension sufficient to secure the safe passage of all such boats, or other crafts, as may navigate said streams; nor shall any thing in this act contained, be so construed as to affect any milldam, erected across any of the water courses aforesaid, previous to the passage of this act, if proper locks or slopes as herein prescribed, be erected and kept in repair, the dimensions and construction of which, together with all the aforesaid locks and slopes, the board of commissioners of the proper county, shall at all times have a right to prescribe and regulate. But no slope or lock, shall be necessary to be made, at or above Winnes' mill on Blue river, until the same shall be declared necessary by law: *Provided moreover*, that it shall not be necessary for the owner of any milldam on White Water, to erect locks and slopes at such dam, wherever the same does not exceed four feet in height, any thing herein before contained to the contrary notwithstanding.

SEC. 5. If any person or persons shall consider, that he, she or they are, or will be damaged by complying with the provisions of this act, such person or persons, may at any time, petition the circuit court of the proper county, setting forth his or their grievance, and the circuit court shall thereupon make an order, authorizing the sheriff of such county, within thirty days thereafter, to summon a jury of twelve

Penalty for injuring navigation of said streams.

Penalty.

Locks or slopes to be attached to milldams.

Persons injured by complying with the provisions of this act, how to proceed.

disinterested freeholders of his bailiwick, to view the premises in question, and under oath to determine, how much such petitioner or petitioners, may and will be damaged, by complying with the provisions of this act, and shall return the same under their hands and seals to such sheriff; and such sheriff shall return the same to the next circuit court, and the court shall record the same on the records of said court; and the said petitioner or petitioners shall not be bound to comply with the provisions of this act, until he, she or they, shall be paid the damages, which said jury may have assessed in his favour, if any; which said damages shall be paid out of the county treasury of the county, where such damages may be assessed. And in all cases, such sheriff is hereby authorized to administer such oath or oaths, as is required by this section to be administered to such jury.

CHAPTER CIV.

An Act for the appointment of County Surveyors and their Deputies.

[APPROVED, JANUARY 30, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That a surveyor shall be appointed in each and every county, and commissioned by the governor; he shall reside within the county for which he shall have been appointed, and before entering on the duties of his office, shall take an oath, faithfully to discharge the same, and give bond to the governor and his successors in office, with two sufficient securities to be approved of by the clerk of the circuit court, in such sum as the governor may direct, for the faithful execution of his office.

SEC. 2. The principal surveyor, shall have power to nominate and appoint a sufficient number of deputies, to perform the duties of his office, and shall be accountable for their acts. May appoint deputies.

SEC. 3. Whenever hereafter, any dispute may arise about the division of any lands, wherein the surveyor of the county where the lands lie, may be a party, or in any manner interested, it shall be lawful for the circuit court, on application of either party, to appoint some suitable person in said county, whose duty it shall be to proceed to divide the same, for which service, the person so appointed shall be entitled to the same fees, as county surveyors are entitled to, for similar services.

Surveyors appointed by the governor.

Oath & bond.

Surveyor interested, the court may appoint for the occasion.

CHAPTER CV.

An Act providing for running and marking the Line dividing the States of Indiana and Illinois.

[APPROVED, JANUARY 8, 1821.]

A commissioner to be appointed on the part of this state, to act with a similar commissioner on the part of Illinois, to adjust, run and mark the line between said states.

When and where said commissioners shall meet. To be sworn. Their duties defined.

Powers & duties of such commissioners.

Further powers and duties designated & marked out.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the governor be, and he is hereby authorized and required, to appoint a commissioner on the part of this state, to act in conjunction with a similar commissioner that may be appointed on the part of the state of Illinois, to adjust, run, and mark the line between the aforesaid states, from where a north line from Vincennes, last leaves the north-west bank of the Wabash river, to the north-west corner of the state of Indiana, or to where said north line intersects the south end of lake Michigan.

SEC. 2. The commissioners appointed pursuant to the provisions of this act, shall meet at the court house in the town of Vincennes, on such day as shall be designated by the executive authority of their respective states, and after being duly sworn, well and truly to perform the duties imposed by the provisions of this act, shall proceed to adjust, run, and mark said state line, agreeably to the boundaries designated by the act of congress, approved, April 19th, 1816, to enable the people of the Indiana territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states.

SEC. 3. The commissioners appointed in pursuance of the provisions of this act, shall have power and are hereby authorized to employ a skillful surveyor, and such chainmen and other persons as shall be necessary to run and mark said state line, agreeable to the provisions of this act, who shall severally take an oath or affirmation, well and truly to perform their several duties.

SEC. 4. The commissioners shall cause the line to be sufficiently marked in the following manner: Where the same runs through timbered land, each sight tree to be marked with three notches on each side, and the trees at a convenient distance on each side, to be blazed in such manner, as will shew on which side the true line runs; and at the end of each and every mile, to set a post at least of six inches diameter of durable timber, to be set at least fifteen inches deep, and mark two or more bearing trees, as nearly as may be in opposite directions, with a blaze and notch across the same, and note the kind of timber, estimated diameter, and course, and distance they are from said post, and to mark on one of said bearing trees, or some other convenient tree, with a marking iron, the words, STATE LINE, at full length; and where said line runs through a prairie, to raise a mound at least four feet high and four feet of a base, at the

end of each mile; and to note in the field book, the crossing of each stream or water course, the width thereof, the course the same runs, and whether navigable or otherwise, and make such other marks as they may deem necessary, in order to perpetuate said state line.

SEC. 5. It shall be the duty of said surveyor, to make out two fair and complete maps of the state line thus run and marked, on good and durable paper, by a scale of ten miles to an inch, with two fair copies of his field book, with explanatory notes and references, annexed to each map under his hand and seal, which maps shall be approved of by said commissioners, and after jointly signing the same, to transmit one of said maps and field books to the secretary of state's office in their respective states, there to be deposited, who shall lay the same before the subsequent general assembly of their respective states for their approval, and when approved by the proper authority of each state, the line so run and marked, shall be and remain the permanent boundary line between the states of Indiana and Illinois.

SEC. 6. The governor of this state is hereby authorized and required to transmit a copy of this act to the executive authority of the state of Illinois, with a request that the same may be laid before the general assembly of said state, with a request that they will pass a similar law.

SEC. 7. When the governor of this state shall be informed by the proper authority of the state of Illinois, that a similar law has passed, and they are ready on their part to carry the same into effect, he shall proceed to appoint a commissioner on the part of this state agreeable to the provisions of this act.

SEC. 8. The commissioner on the part of this state, shall receive as compensation for his services, the sum of three dollars per day, for each day he may be necessarily employed in the duties of his office, to be paid out of the treasury of this state, and the surveyor, chainmen and other persons employed, shall receive such compensation as the commissioners shall deem reasonable: *Provided*, the whole expenses thereof shall not exceed five dollars per mile, to be paid jointly by each state.

The duties required of the surveyor, pointed out in this section.

The governor of this state to transmit a copy of this act, &c.

When the commissioners for this state shall be appointed.

Allowance made to the commissioners, surveyor, chainmen, &c. on the part of this state.

CHAPTER CVI.

A Joint Resolution confirming the Line between the States of Indiana and Illinois.

[APPROVED, DECEMBER 11, 1821.]

Resolved by the General Assembly of the state of Indiana, That the plat and field notes of the line dividing the states of Indiana and Illinois, made by John McDonald, surveyor,

Taverns.

and approved the twenty-sixth day of July, eighteen hundred and twenty-one, by John Tipton and Samuel M'Clinton commissioners on the part of said states respectively, be deposited in the office of the secretary of state, for safe keeping.

Resolved also, That the said line, commencing on the north or north-west bank of the Wabash river, forty-six miles from Vincennes, and terminating in Lake Michigan, be, and the same is hereby approved, ratified and confirmed on the part of this state; and that so soon as said line shall be ratified on the part of Illinois, the same shall be and remain the permanent boundary line between the states of Indiana and Illinois.

CHAPTER CVII.

An Act to License and regulate Taverns.

[APPROVED, JANUARY 20, 1824.]

Commissioners may license retailers.

Certificate necessary.

Bond.

Circuit court may suppress license.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the several courts of county commissioners, are hereby authorized to license as retailers of spiritous or strong liquors, every person who may apply therefor; but the said courts shall not grant any license or permit to any person, to vend spiritous or strong liquors in any county within this state, unless such person applying therefor, shall produce the certificate of twelve respectable freeholders, that the person so applying is of good moral character, and that it would be for the benefit and convenience of travellers, for such person to be licensed as aforesaid, nor unless the person so applying, shall give bond with sufficient security to be approved of by such court, in the sum of five hundred dollars, payable to the county treasurer for the time being, and his successors in office, that he or she will not permit any gambling, rioting or disorderly conduct, in his or her house, but will conform to the laws of this state restraining gambling and disorderly conduct about taverns or public houses; and that he or she will not suffer any unlawful assemblies, or sell or retail any spiritous or strong liquors on the sabbath day, or first day of the week, commonly called Sunday, except to travellers; which bond shall be filed in the clerk's office, and if the condition thereof be forfeited, the circuit court at any time thereafter, on complaint made to them, are hereby authorized to suppress such license, and it is hereby made the duty of the county treasurer, to put such bond in suit.

SEC. 2. In all cases when any person shall hereafter ob-

Taverns.

tain a license or permit, to vend spiritous or strong liquors, he shall in addition to the conditions of the bond aforesaid, be bound to keep constantly on hand, the bedding and stabling, with the other accommodations necessary for the comfort and convenience of travellers; and no license or permit as aforesaid, shall be transferable in any manner whatever.

Bedding and
stabling ne-
cessary.

SEC. 3. No person shall obtain license as a retailer of spiritous or strong liquors, until he or she shall pay to the county treasurer, the amount required by law for such license, nor shall any license continue, for a longer time than one year; but where there has been no complaint of disorderly conduct, the court of county commissioners may grant a new license, without the certificate aforesaid; and in vacation, between the meetings of such courts, their clerk may give a permit to any person applying, to retail spiritous or strong liquors, until their next meeting, if such person shall and will comply with the preceding provisions of this act; but if any person shall continue to retail spiritous or strong liquors, after his or her license has expired, such person shall be subject to the same fine, as though he or she had never had a license; and if any person obtaining license under the provisions of this act, shall, during the continuance of such license, fail to comply with any of the requisitions of this act, he shall upon presentment or indictment, be fined in any sum not exceeding fifty dollars, and have his tavern abated.

Applicant
must pay to
treasurer &c.
before license
obtained.

SEC. 4. No person shall barter or sell to any minors, apprentices or servants, any strong or spiritous liquors, without the consent of his or her parent, master or mistress.

May not sell
to minors.

SEC. 5. If any retailer as aforesaid, shall sell on credit to any person, except travellers, spiritous or strong liquors to a greater amount than five dollars, he or she shall not have the benefit of the laws of this state to enforce the collection of his or her debt for such sum so due.

May not cre-
dit more than
five dollars for
liquors:

SEC. 6. No retailer of spiritous or strong liquors, shall knowingly sell or dispose of any intoxicating liquors to any person in a state of intoxication.

Nor sell to
persons intox-
icated.

SEC. 7. It shall be the duty of the county commissioners annually, to fix the tavern rates, having the same recorded with their other proceedings; and when any person is licensed to keep a tavern, agreeably to the provisions of this act, they shall cause their clerk to furnish such tavern keeper, a distinct and fair list of such rates; which person so licensed, shall thereupon cause the same, or a copy thereof, to be set up in the most public room in his or her house; and the clerk therefor shall be allowed twenty-five cents, to be paid by such tavern keeper.

Tavern rates.

SEC. 8. It shall be the duty of the circuit courts, at their several terms in the proper counties within this state, to give this act in charge to the grand jury.

Act to be giv-
en in charge
to grand jury.

CHAPTER CVIII.

An Act to prevent Trespassing by Cutting of Timber.

[APPROVED, JANUARY 21, 1818.]

Persons cutting trees, &c.,
to pay damages to the party injured.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That if any person shall cut, box, or bore, or otherwise injure, any tree or sapling, on the land of any other person or persons, without his, her, or their consent, every person so offending, shall, on conviction thereof, pay to the owner or owners of such land, the amount of damages so done, with costs of suit, to be collected before any court competent to try the same.

SEC. 2. If any person or persons shall take away or remove off of any other person or persons' land, without the consent of the owner or owners, their agent or agents, any timber, stone, or other valuable article, growing thereon, he, she, or they, shall be adjudged guilty of a trespass, and on conviction thereof, shall forfeit and pay to the party injured, treble the amount thereof, to be recovered before any court having jurisdiction thereof.

The act to prevent trespassing by cutting of timber, heretofore in force in this state, is hereby repealed.

This act to take effect and be in force, from the first day of September next.

Persons carrying away timber, &c., to pay damages.

CHAPTER CIX.

An Act to regulate the Inspection of Tobacco.

[APPROVED, DECEMBER 27, 1816.]

Tobacco to be exported, but in hogsheads inspected.

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That no person shall ship on board of any boat or vessel, or receive on board of any boat or vessel, in order to be exported therein, any tobacco, not packed in hogsheads, upon any pretence whatever, nor in any hogshead, to be in that or any boat or vessel exported out of this state, before the same shall have been inspected or received, according to the directions of this act; but that all tobacco, hereafter to be received or shipped on board any boat or other vessel of what kind soever, for the purpose of exportation, shall first be inspected at some legal warehouse, in the manner hereinafter prescribed, and shipped or received from no other, under any pretence whatsoever.

SEC. 2. Inspections of tobacco shall be established at such places, as the county commissioners of the several counties may establish.

County commissioners establish places of inspection.

SEC. 3. All tobacco which shall be brought to any warehouse legally established as such, shall be received and inspected by two persons to be thereunto appointed, in the manner hereinafter prescribed, who shall be called Inspectors of Tobacco.

Tobacco to be inspected, & by whom.

SEC. 4. It shall be the duty of the county commissioners to appoint three suitable persons as inspectors at each place of inspection authorized by this act, and who shall before entering upon the duties of the said office, enter into bond with good security, in the penalty of one thousand dollars, payable to the governor for the time being and his successors in office, with condition of the faithful performance of his duty, according to the directions of this act; which bond shall be recorded in the recorder's office of the proper county, on which suit may be brought by any person injured for damages. And every such inspector shall take the following oath before he enters on the duties of his office: Oath. (that is to say) "You do swear or affirm that you will diligently and carefully view and examine all tobacco brought to the warehouse herein appointed as such, and to which you are appointed inspector, and that you will not receive or pass any tobacco, that is not in your judgment, sound, well conditioned and merchantable, nor refuse any tobacco that is sound, well conditioned and merchantable; and that you will not change or give out any tobacco other than such for which the receipt to be given was taken; but that you will in all things faithfully discharge your duty as inspector, according to the directions of this act, without fear, affection or partiality: So help you God;" which oath shall be administered by any person authorized to administer oaths, a certificate of which oath shall be filed in the clerk's office of the circuit court, (by the person administering the same) of the county wherein such inspector shall be appointed.

Three inspectors to be appointed;
Who shall enter into bond.

SEC. 5. It shall be the duty of the proprietor of any warehouse or warehouses herein before appointed, or that may be hereafter appointed, to provide for the use of the inspectors, a good and sufficient pair of scales, with weights to weigh at least fifteen hundred weight, and a set of smaller weights, the same that are or ought to be provided for the standard weights of each county; and that it shall be the duty of the inspectors at the several warehouses, at the first session of the board of county commissioners, to be held in each year for their respective counties, to produce and render in to the respective boards of county commissioners, an exact account under their hands, of the number of hogsheads of tobacco inspected at their respective warehouses, the preceding year, and of the condition of the scales and weights belonging to the same, together with the state and capacity of the warehouse; and thereupon if the board of county commissioners shall not be satisfied that the scales

Scales and weights to be provided.

Number of hogsheads inspected, annually to be rendered to the county commissioners, to

gether with the state and capacity of the warehouse. Commissioners may order the proprietors to furnish weights & repair the houses, &c.

and weights, belonging to the said warehouse or warehouses, are sufficient and legal, or that the said warehouse or warehouses are not sufficient to contain in safe keeping the tobacco inspected in them, that such board of county commissioners shall immediately enter an order that the owner or proprietor of such warehouses, shall within such reasonable time as the said board of county commissioners shall think fit to allow, repair the scales, and furnish the legal weights of the county; and moreover make such repairs and alterations of the said warehouses, as in the opinion of the board of county commissioners, shall be deemed sufficient for the safe keeping of the tobacco inspected in the same.

Time inspectors are to attend.

Penalty for not attending.

Tobacco to be entered in a book as bro't in.

Inspected in turn.

Each hogshead to be uncased, and if sound & merchantable, to be stamped, marked, and receipts given therefor.

Refused tobacco may be packed.

SEC. 6. All inspectors to be appointed by virtue of this act, shall attend at the warehouses under their charge, whenever called on for that purpose, except on Sundays, or when hindered by sickness, to inspect, receipt for or to deliver such tobacco as may be for inspection, or delivery at the warehouse or warehouses, under their charge; and that every inspector neglecting to attend as aforesaid, shall forfeit and pay to the party injured, five dollars for every neglect, and shall be also liable to pay such damages to the party injured as he may have sustained from such neglect, with costs of suit; and that all persons may have equal justice at the said warehouses, the inspector shall enter in a book to be kept for that purpose, the marks and owners names of all tobacco brought to their respective warehouses for inspection, as the same shall be brought in, and shall view and inspect the same in due turn, as it shall be entered in such book, without partiality, and shall uncase and break every hogshead of tobacco brought them to be inspected as aforesaid; and if such tobacco shall be sound, well conditioned and merchantable, it shall then be weighed in scales, with weights of the lawful standard, and the hogsheads shall be stamped or marked in the presence of the inspectors, or one of them, with the name of the warehouse at which inspected, and also the tare of the hogshead, and the quantity of net tobacco therein contained, and the inspectors at such warehouses shall issue a receipt for each hogshead of tobacco they shall pass; which receipt shall describe the weight, number, and stamps, or marks of each hogshead so inspected.

SEC. 7. When any tobacco shall be refused by the inspectors, the proprietor thereof shall be at liberty to separate the good from the bad, within one month after such refusal, after which time it shall be lawful for the inspectors to cause the said refused tobacco to be picked, and reprised and to give the owner thereof, credit for so much thereof as shall be found merchantable, after paying the pickers one fifteenth part of the quantity saved; and the inspectors shall

cause the tobacco refused as unfit for market, to be burnt, under the penalty of ten dollars, to be recovered before any justice of the peace, with costs of suit, one half to the informer, and the other half to the use of the county: *Provided*, that nothing contained in this section, shall prevent the owner of such tobacco as may have been refused, to remove the same from the said inspection at his own risk, after paying all the fees authorized by this act.

SEC. 8. For restraining the practice of mixing trash with tobacco, and of packing it in unsizable hogsheads; no tobacco, whether the same be packed loose or in bundles, shall be accounted lawful, unless the same be packed and prized in hogsheads measuring fifty-two inches in the length of the stave, and thirty-two inches at the head without the crow, making reasonable allowances for prizing, which allowances shall not exceed two inches above or below the gauge in the prizing head. But the owner of tobacco packed in hogsheads contrary to these dimensions, shall be obliged to repack the same in sizeable hogsheads, at his own charge, before the same shall be received, marked, or stamped by the inspectors.

Regulations for packing tobacco.

Size of tobacco hogsheads.

SEC. 9. The inspectors of tobacco in the several warehouses in this state, shall immediately on the delivery of every hogshead of tobacco at the warehouse where there are inspectors, give a receipt for such tobacco if required by the proprietor or person bringing the same to the said warehouses, expressing therein the receipt is for uninspected tobacco; every inspector refusing so to do, shall forfeit and pay to the owner of such tobacco, the sum of five dollars.

Inspector if required, shall give a receipt for tobacco.

SEC. 10. The rents of the several warehouses established by this act, shall be, and they are hereby fixed at fifty cents for every hogshead of tobacco that shall be received and inspected, and delivered out of such warehouse respectively; and there shall be paid to the proprietors of each warehouse, for all tobacco lying there more than twelve months at the rate of four cents per month for each hogshead, to be paid by the shipper thereof, at the time of shipping the same, which several rents shall be collected by the inspectors for the use of the proprietors; and the inspectors shall be entitled to receive seventy-five cents for each hogshead of tobacco wagoned and delivered, and one dollar for each hogshead rolled as aforesaid, to be paid in like manner as warehouse rents are, and to be divided between the acting inspectors, as their full fee for inspection; and no inspector shall receive a salary or other fee, except what is allowed by this act.

Warehouse rent, rate thereof.

Inspectors, their fees.

SEC. 11. When any new inspectors shall be appointed at any of the said warehouses, their predecessors shall, and they are hereby required to transfer to such new inspectors

New inspector shall receive all books, papers, &c. giving a receipt therefor.

all books and papers belonging to the same, and the said new inspectors are also required to give to the person or persons whom they shall succeed, a receipt with his or their hands subscribed, descriptive of all the books, papers, tobacco, &c. which they shall have received from the same.

SEC. 12. The proprietor or proprietors, inspector or inspectors, and all other persons who may by law be concerned in any of the warehouses established by this act, shall discharge all the duties herein assigned to them respectively; and for every neglect of the same, he or they, shall be liable to the party injured, in an action on the case to be brought in any court having jurisdiction of the same; and that all penalties and forfeitures in this act contained, and not herein before particularly appropriated, shall be applied to the support of the seminaries of the respective counties where such offence shall have been committed, which shall be recovered with costs, by action of debt in any court of record within this state, where the penalty may accrue on any instrument in writing, given by the party in the discharge of the duties herein before assigned: *Provided nevertheless*, that nothing in this act contained, shall be so construed as to prevent any person or persons from sending to market, any tobacco which he or they may have on hand at any time before the necessary number of warehouses and inspectors are erected and appointed, and until the necessary weights and scales are provided as directed by this act; nor to prevent any person or persons from sending to market or selling any quantity of tobacco, which may be manufactured in such quantities and in such casks or kegs as he or they may think proper.

General proviso.

Proprietors & inspectors liable for neglect of duty.

Appropriation of fines and penalties.

CHAPTER CX.

An Act for Recording Town Plats.

[APPROVED, JANUARY 21, 1818.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That any person or persons, his, her or their legal representatives, who may hereafter lay off any town within this state, shall, previous to the sale of any lots in such town, cause to be recorded in the recorder's office of the county, wherein the same may lie or be laid off, a correct copy of the plat of said town, with the public ground, (if any there be,) streets, lanes, and alleys, with their respective widths properly marked, and the lots, regularly numbered in numerical order, and the size of the lots marked by reference to the plat of said town.

Flat to be recorded before sale.

SEC. 2. Every donation or grant to the public or any individual or individuals, religious society or societies, or to any corporation or bodies politic, marked or noted as such on the plat of the town, wherein such donation or grant may have been made, shall be considered to all intents and purposes, as a general warranty to the said donee or donees, grantee or grantees, for his, her, or their use, for the purposes intended by the donor or donors, grantor or grantors aforesaid.

SEC. 3. Every person or persons, hereafter laying off any lots in addition to any town in this state, shall previous to the sale of such lots, have the same recorded under the same regulations, as is provided for recording the original plat of said town, which shall be considered as an addition thereto,

SEC. 4. Every person or persons whose duty it may be, to comply with the foregoing requisitions, shall, at or before the time of offering such plat or other paper or papers for record, acknowledge the same before the recorder of the proper county, or some justice of the peace thereof, a certificate of such acknowledgment shall be (by the officer taking the same) endorsed on the back of such plat or other paper, and recorded therewith, and form a part of said record.

SEC. 5. Every person or persons, who may lay off any town or any addition to any town in this state, and neglect or refuse to comply with the requisitions of this act, shall forfeit and pay for the use of said town, for every month that he or they may delay a compliance with the provisions aforesaid, the sum of one hundred dollars, to be recovered by action of debt, *qui tam*, or otherwise, in the name of the treasurer of the county: *Provided*, that where any town plat heretofore recorded, does not fully and clearly set out and describe the size of the lots, streets, alleys, and courses of the lines of said town, and where donations have been given or intended to have been given, either to the public or to individuals, or to any religious society or societies, and the same hath been neglected to have been inserted on said plat, the proprietors of such town, or either of them, is or are hereby empowered and required, to make out such other description as will more fully and clearly explain their true intentions; which shall be acknowledged, certified, and recorded, in the same manner town plats are to be acknowledged, certified, and recorded as required in this act.

All laws and parts of laws, relative to the recording of town plats, are hereby repealed.

This act to take effect from and after its publication.

Subsequent description, &c.

Donations noted on record.

CHAPTER CXI.

An Act providing for the Incorporation of Towns.

[APPROVED, JANUARY 30, 1824.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That whenever the inhabitants of any town wish to become incorporated, for the better regulation of their internal police, it shall be lawful for the qualified voters, who shall have resided six months therein, and pursued any trade or occupation during such time, or who shall be the owner of any freehold property in said town, to assemble themselves on the first Monday in the month of March or September, at the court house, or other place in said town, and when so assembled, they may proceed to choose a president and clerk of the meeting, both of whom shall be sworn or affirmed by any person authorized to administer an oath, faithfully to discharge the trust reposed in them, as president and clerk of the meeting.

SEC. 2. The qualified voters of any town having assembled and chosen their president and clerk as aforesaid, at the place and time aforesaid, may proceed to decide by vote *viva voce*, whether they will be incorporated or not; and the president and clerk aforesaid, shall certify under their hands and seals, after their votes are given in, the number of the votes in favour, and the number against being incorporated; and if two thirds of the voters present, shall be in favour of being incorporated, the president and clerk shall make the same known to the voters, and shall deliver a certificate of the state of the polls, to the board of trustees, to be elected as hereinafter mentioned.

SEC. 3. Whenever the qualified voters of any town, shall have decided in the manner aforesaid, that they wish to become an incorporated body, they may on the next succeeding Monday, and annually thereafter on the same day, choose by ballot, five freeholders as trustees, who shall hold their office, for the term of one year, and until other trustees are chosen and qualified; at which first election for trustees, the president and clerk of the meeting aforesaid to ascertain the wishes of the inhabitants of such town, shall preside; but in case of the absence of the president and clerk aforesaid, or either of them, some suitable person or persons shall be appointed by the electors present, to fill such vacancy or vacancies; and at every succeeding election, the preceding board of trustees, shall direct the manner in which the same shall be conducted.

SEC. 4. Vacancies made by death, resignation, or otherwise, shall be supplied by election, in manner herein before directed, by the qualified electors, on a day to be appointed by the remaining trustees, and the returns shall be made in such manner, as shall be directed by the trustees.

Who may vote

President and clerk.

Voters decide whether they will be incorporated or not

Trustees, when and by whom chosen.

President and clerk pro tem. may be appointed.

Vacancies, how filled.

SEC. 5. Whenever trustees of any town shall be elected in manner as herein before directed, at the first election of trustees for any town, it shall be the duty of such trustees, before they proceed to make any laws or regulations by virtue of their election to office, to deposit in the clerk's office of the respective county, the certificate of the president and clerk of the first meeting of the qualified electors of such town, agreeably to the second section of this act, and also a certificate of the president and clerk aforesaid, of the election of the first board of trustees, together with their names; and no act or ordinance of any first board of trustees, shall be valid or of any force, unless the provisions of this act shall have been strictly pursued.

SEC. 6. It shall be the duty of the clerks of the several counties, to make a record of such certificate as may be lodged in their offices by the board of trustees, agreeably to the provisions of this act, within three months after the same shall have been deposited in their respective offices, under the penalty of five hundred dollars, recoverable in any court of record having jurisdiction thereof; for which services they shall be allowed the same fees to be paid by the trustees as for similar services.

SEC. 7. The board of trustees of any town, elected agreeably to the provisions of this act, shall choose a president out of their own body; and the president and trustees aforesaid, duly elected agreeably to the provisions of this act, and their successors in office, shall thenceforth be considered in law and equity a body corporate and politic, to have Body corpor- continuance forever by the name and style of The President rate & politic, and Trustees of the town of —; and by such corporate name and style, shall be forever able and capable in law and equity, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all manner of suits, actions, plaints, pleas, causes, matters and demands, of whatever kind or nature they may be, in as full and effectual a manner as any person or persons, bodies corporate and politic may or can do.

SEC. 8. Whenever any town within this state, shall be incorporated agreeably to the provisions of this act, the president and board of trustees or a majority of them, shall have full power from time to time, and at all times, to make, ordain, establish and execute, such by-laws and ordinances in writing, not inconsistent with the laws and constitution of this state, as they shall deem useful and necessary for the good government of said corporation; and to prevent and remove nuisances, to restrain and prohibit gambling, or other disorderly conduct, to provide for licensing, regulating or restraining theatrical or other public shows or amusements within the corporation, to regulate and establish markets, to sink and keep in repair public wells, to keep in re-

Trustees to deposite cer- tificate, &c. in clerk's office.

Clerk record certificate.

Body corpor- rate & politic.

Trustees, their powers & du- ties.

pair all necessary streets, alleys, and drains, and to pass regulations necessary for the same, agreeably to the plan of said town.

Assess & collect taxes.

SEC. 9. The president and board of trustees, or a majority of them, shall have full power to assess and collect annual taxes on all real property, not exceeding fifty cents on every hundred dollars of assessment valuation thereof; also a poll tax on every actual citizen qualified to vote, not exceeding fifty cents each; also a reasonable tax on all other property which they may think proper subjects of taxation; also full power and authority to appoint a lister, a treasurer, a clerk, and such other officers as they find necessary, and shall allow them what they shall deem reasonable, for their services; who, when appointed, shall be governed by such rules and regulations, as shall be prescribed by said president and board of trustees; and the person or persons appointed to collect any tax imposed by virtue of any of the powers granted by this act, shall have authority to collect the same, by distress and sale of goods and chattels of the person chargeable with the same tax, on giving ten days previous notice of the time and place of such sale; and if no goods and chattels, of the person chargeable with said tax, can be found, it shall be lawful to seize and sell any lot or lots, or part or parts thereof, or so much as will pay and satisfy such taxes due and in arrear, and all costs accruing on such sale, paying to the owner or owners the overplus if any.

Majority of members a quorum.

SEC. 10. A majority of the members of any corporation shall be a quorum to transact business, but a less number may make adjournments, and shall have the power to compel the attendance of absent members, by imposing such fine on delinquents as will answer their attendance; and the said board of trustees shall be the judges of the election of their own members and officers, and two thirds of the members concurring, may expel any officer or member, for mal-conduct or highly disorderly behaviour.

Number of trustees may be increased.

SEC. 11. When in the opinion of the board of trustees of any town, it would be a benefit to such town to increase the number of trustees thereof, they may order nine to be elected at their next annual election, and at every succeeding annual election thereafter.

Fines not to exceed \$3.

SEC. 12. The said president and board of trustees, shall have full power and authority to enforce their by-laws and ordinances in all cases whatsoever; but no fine, penalty or forfeiture shall be inflicted on any one person, for a breach of any one of their by-laws or ordinances for more than three dollars for every time he or she shall so offend; which penalties and forfeitures may be recovered before any justice of the peace in the county, by action of debt according to law.

SEC. 13. No by-law or ordinance shall be in force until it By-laws, &c. shall have been published in at least three of the most public places in said town for ten days.

SEC. 14. All monies arising from collection of taxes, fines, Monies, to penalties and forfeitures, shall be appropriated by the said president and board of trustees, towards the erecting, improving and regulating those objects, which by this act are placed under their control and jurisdiction, as likewise for defraying all such expenses as may accrue or necessarily arise out of the exercise of the powers granted to them by this act: That the bounds of the corporation of each town, shall be the building lots as recorded in the recorder's office of the respective counties; and when any new building lots shall be laid off adjoining any town, and the plat thereof recorded, the same shall form a part of the said corporation, entitled to the same privileges, and subject to the same rules and regulations as the original corporation.

Bounds of corporation.

SEC. 15. It shall be lawful for the trustees of any incorporated town in this state, to extend the jurisdiction of the corporation thereof, over any commons or public ground belonging to the said town; and the trustees of any incorporated town situate on the bank of the Ohio river in this state, shall have power to regulate the banks, shores and wharves in front of such town, and the same shall be deemed a part of the corporation, and within the jurisdiction of the trustees thereof: *Provided*, the owner or owners of the same shall consent thereto: *Provided however*, that this act shall not give power to any corporation, to alter, vacate, or in any manner affect any ferries, heretofore established by law, or which hereafter may be established.

Jurisdiction of trustees may be extended.

Proviso.

SEC. 16. The corporation of any town shall have power to erect a prison within their corporate limits, and it shall be lawful to imprison therein, persons convicted of offences against the laws of such corporation, or of offences against the penal laws of this state, the jurisdiction of which is vested in justices of the peace; and also persons charged with offences punishable by indictment or presentment temporarily, until they can be conveniently removed to the county jail, and the laws relating to county jails, so far as the same may be applicable, shall be the laws of the town prisons aforesaid.

May erect a prison.

SEC. 17. That any person convicted of petty offences as aforesaid, and fined therefor within such corporate town, if they have no goods and chattels out of which the same can be made, may commute the same by labour on the public streets of such town, at the rate of fifty cents per day until the fine assessed be discharged; and if any such prisoner after undertaking to commute as aforesaid, shall escape without performing the same, he may be fined for such ef-

Commutation of labour for fines.

Towns Vacation of... Trespassing Animals.

fence not exceeding the amount of the original fine for which he may have undertaken as aforesaid.

Sec. 18. Nothing in this act shall be so construed as to prevent the citizens of any town heretofore incorporated, from adopting this act of incorporation; and in case they shall do so, their former charter, so far as it may be contrary to the provisions of this act, shall be void: *Provided*, that nothing in this act contained, shall prevent any general assembly, from hereafter dissolving the corporation hereby authorized, or repealing this act or any part thereof, or from making any amendments thereto, that may be deemed expedient.

Towns previously incorporated, may adopt this act.

CHAPTER CXII.

An Act supplemental to the act, entitled "An act authorizing the citizens of towns to vacate said towns, or any part thereof, and for other purposes."

[APPROVED, JANUARY 30, 1824.]

Be it enacted by the General Assembly of the state of Indiana, That in all cases, in the act to which this is a supplement, in which a notice in a public newspaper is required, it shall be lawful in lieu thereof, if there should not be a newspaper published in said county, to give the notice in writing, and have the same set up in three of the most public places of the county.

Notice in writing sufficient in certain cases.

CHAPTER CXIII.

An Act concerning Trespassing Animals.

[APPROVED, JANUARY 23, 1818.]

Sec. 1. Be it enacted by the General Assembly of the state of Indiana, That if any horse or horses, neat cattle, sheep, or hogs, shall trespass by breaking into the lawful enclosure of any person or persons, every such person or persons being injured by such trespassing creature or creatures, the same may seize and distrain, and may retain until he, she, or they shall recover and receive the damages sustained by such trespass, together with the costs of advertising, and reasonable charges for keeping such creature or creatures so distrained, in manner hereinafter directed.

Trespassing animals may be distrained.

Sec. 2. Every person or persons making such distress, shall, within the space of forty-eight hours after the same

Trespassing Animals.

shall have been made, give notice thereof to the owner or Notice thereof

owners of such horse or horses, neat cattle, sheep, or hog, if he, she, or they can be conveniently found; but if not, then such person or persons seizing or distraining the same, shall, within three days after the distress, made as aforesaid, cause an advertisement of the marks, brands, stature, and colour thereof, and of the place where the same may be found, to be affixed in a conspicuous manner, at the most public place in his or her township, and if upon such notice or advertisement, such owner or owners shall appear, but neglect or refuse to make or tender a reasonable satisfaction to the party injured, for the damages sustained by such trespass, and in keeping the said creature or creatures, or if the said person or persons making the distress, shall not accept the said satisfaction, it shall and may be lawful for either of the parties aforesaid, to complain and apply to any justice of the peace, of the county where such creature or creatures shall have been seized and distrained as aforesaid, who shall upon such application and complaint, issue his warrant, directed to any two honest and respectable freeholders of the neighbourhood, commanding and enjoining them forthwith to view the said trespass, and to value, appraise, and ascertain the injury or damage done to or within the enclosure aforesaid, having due regard to the lawfulness of said fence, at the time the trespass shall have been committed, with the expenses and costs of keeping the said creature, and to make report on oath thereof to him, with all convenient speed; which said valuation and appraisement and return, they, the said freeholders, are required and enjoined to make accordingly; and if the said valuation and appraisement, shall not amount to more than the sum of money tendered to the party injured, as a recompense for the damage done as aforesaid, before such complaint made, then the said justice shall give judgment for the same only, to the party refusing such tender and reward, reasonable costs and charges to the other party, for the unjust vexation; but if the said valuation shall amount to more than the sum tendered, or if no such tender be made, then, and in that case, the said justice shall award and give judgment for the valuation aforesaid to the party injured, with reasonable costs and charges for keeping the said creature or creatures, so trespassing against the other party, and shall award execution upon every such judgment, with costs of suit accordingly.

Sec. 3. Whoever shall hurt, kill, or do damage to any horse Person killing or horses, neat cattle, sheep, or hog, by hunting or driving them out of, or from the said enclosure, or by neglecting to provide them with sufficient food and water, after they have been distrained, shall be liable to make good all damages or injuring trespassing animal, liable.

Trespassing Animals.

sustained thereby, to the owner of such creature or creatures.

When there is no owner, animal to be appraised to dis-trainer.

SEC. 4. If no owner or owners appear and make out his or their property in the said creature or creatures, within two weeks after such advertisement shall be published in the township as aforesaid, the person or persons making such distress, shall forthwith under the penalty of twelve dollars, cause the like advertisement to be published three times successively, in one or more newspapers printed and published in this state, or in the county where such distress is made, if any be there published; but in case no such newspaper be published near said county, then such advertisement shall be put up in a conspicuous manner at the court house door of that county, and the party distraining shall make application, at the expiration of two months after the publication of the said advertisements, to the said justice of the peace, who is hereby authorized and required to issue his warrant to two honest and respectable freeholders, and cause them upon their oaths or affirmations, to view, value and appraise the creature or creatures so distrained, and to ascertain the damages so done as aforesaid, with reasonable charges for keeping the said creature or creatures, and to make return thereof to him as aforesaid; upon which valuation and return the property of and in the creature or creatures so valued, shall become and be held and be taken to be, and is hereby vested in the person making such distress; but nevertheless, he shall be accountable and answerable to the owner or owners aforesaid, for the valuation money aforesaid, at any time afterwards within the space of five years next after the publication of such advertisement as before mentioned in this act, having first deducted thereout, the costs of such proceedings, advertisements and charges of keeping the said creature or creatures, together with the damages ascertained by the before mentioned freeholders; but if the said owner or owners shall not appear and demand the same within the time limited by this act, then the said person or persons so making the said distress or distresses, upon demand made, shall pay over all such overplus money to the treasurer of the county, for the use of the said county, under the penalty of double the sum retained in his or her hands, contrary to the directions of this law.

Owner may have the same by paying damages & charges, within 5 years.

Person failing to give notice, not entitled to damages.

SEC. 5. If any such person or persons so distraining shall neglect to give such notice as herein before directed, or shall neglect to set up and publish such advertisement in the most public place in his or her township, he, she or they shall lose all right or title or pretence of right to a recovery of any sum or sums of money for such trespass, or any recompence for the same, but shall deliver up the said creature or creatures so distrained, to the owner or owners thereof,

Vagrants.

without any recompence or reward whatsoever; and that one-half of all the fines imposed by virtue of this act, shall be to the use of the owner of such creature, and the other half thereof to the use of the county, to be recovered by them or either of them in a summary way, as debts not exceeding fifty dollars are by law directed to be recovered.

SEC. 6. If any person or persons shall willingly and knowingly keep and retain any horse or horses, neat cattle, sheep or hog, within his, her or their enclosure, for the space of forty-eight hours without giving the notice and publishing the advertisements aforesaid, every such person or persons shall forfeit and pay twelve dollars for every such offence, to be recovered and applied in manner aforesaid.

CHAPTER CXIV.

An Act concerning Vagrants.

[APPROVED, JANUARY 22, 1818.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That every person who shall be suspected to get his livelihood by gaming, and every able bodied person, who is found loitering and wandering about and not having wherewithal to maintain himself by some visible property, and who doth not betake himself to labour or some honest calling to procure a livelihood, and all persons who quit their habitation and leave their wives and children without suitable means of subsistence, whereby they suffer or may become chargeable to the county, and all other idle, vagrant, dissolute persons, rambling about without any visible means of subsistence, shall be deemed and considered as vagrants.

SEC. 2. When any such person is found in any county, any justice of the peace shall from information, or from his own knowledge, issue his warrant to the sheriff or constable, to bring such person before him, and if upon examination it shall appear to such justice, that he comes within the description of vagrants, agreeably to this act, he shall commit him to the jail of the county until the next circuit court, unless he enter into bond, payable to the county treasurer in the sum of fifty dollars, with sufficient security or securities, to be adjudged of by the justice, for his appearance before the said court, and to abide the determination thereof. If upon examination it appears to the said court, that such person is within the description of vagrants, and is a minor, they shall direct the sheriff to bind him to some person of useful trade or occupation, until he shall arrive to the age of

Justice may commit such person to jail.

Court may bind out such person.

Vagrants.

of twenty-one years, and if such apprentices desert their masters, they shall be dealt with as other apprentices who leave their masters before the expiration of their apprenticeship. But if such vagrant be above the age of twenty-one years, the said court shall direct the sheriff to hire him out for any term not exceeding nine months: *Provided however,* that if such person have a wife or family within the state, he shall be set at liberty, upon his entering into bond, with approved security, payable to the county treasurer, to return to his wife and family, and follow some useful employment for their maintenance and support.

Proviso.
Money arising
from hire, &c.
how appropri-
ated.

SEC. 3. The money arising from the hire of any vagrant, shall be applied by the court towards the payment of his debts; but if he shall not be indebted or owe to the amount of his hire, the same or the balance thereof shall be paid to such vagrants, at the time his or their service expires, unless he shall have a wife or children, in which case it shall be applied to their use. When any vagrant shall have entered into bond and security as last mentioned, to the county treasurer, and the penalty thereof shall become forfeited, the court shall direct an execution to issue thereupon; having first given ten days notice to the party or parties by scire facias, that such execution will issue if no cause be shewn why the same ought not to issue against the goods and chattels, lands and tenements of such security, the sheriff shall make distress and collect the amount, as on other executions, and the money arising therefrom shall be applied towards lessening the county levy.

*J. p. shall see
this act enfor-
ced.*

SEC. 4. All the justices within their respective townships, shall see that this act is executed, and all sheriffs and constables within the several counties, shall give information to such justices, of all vagrants that may be within their knowledge in their respective townships, and grand jurors empanelled for any county, shall make presentment of all such persons within the county as they may suspect to be vagrants, agreeable to this act; and upon such presentment the court shall direct some justice of the peace, to issue his warrant to bring such suspected person before him, and if upon examination it appears that they come within the description of vagrants, the same steps shall be taken against them as are heretofore directed to be taken against vagrants.

SEC. 5. All laws and parts of laws, heretofore in force respecting vagrants, shall be, and the same are hereby repealed.

This act to be in force from and after its publication.

CHAPTER CXV.

An Act prescribing the mode of Changing the Venue.

[APPROVED, JANUARY 28, 1824.]

SEC. 1. *Be it enacted by the General Assembly of the state of Indiana,* That in all civil suits at common law and in chancery, cognizable in any of the circuit courts of this state, now pending or which may hereafter be pending, when either of the parties shall conceive, that he, she, or they, will not receive a fair trial in the circuit court, where such suit is pending, owing to the presiding judge having been engaged as counsel in the cause, prior to his appointment as judge, or that one or both the associate judges of the court in which the suit is pending, is or are of kin to either of the parties, in any of the following degrees, to wit: As father, son, brother, uncle, first cousin, or brother-in-law, or where one or both of the associate judges are interested, and the presiding judge may be of kin to one of the parties, in the manner aforesaid, or to the undue influence, of his or their adversary or adversaries, or to the odium which attends the said party, or attaches to his, her, or their legal cause of action or defence, or to local prejudices, it shall and may be lawful for the party, so suspecting that he, she, or they will not receive a fair and impartial trial in the court, then sustaining said suit, owing to the said causes or any of them, at any time to petition a president of the circuit, or the associate judges of the county where the suit is pending, for a change of venue; which said petition shall distinctly set forth the cause or causes, why such suspicion is entertained, and be supported by affidavit of the petitioner or petitioners, or some one of them; which being done, it shall and may be lawful for the judge or judges aforesaid, on the receipt of said petition, under his hand or their hands, to award a change of venue, and order the clerk of the court before whom the suit is then pending, to send forward the papers in said suit, by some meet person employed by such clerk, to such court having jurisdiction in similar cases, as the said judge or judges may direct; and the clerk thereof shall receive such papers, giving a receipt therefor, and docketing the said suit in order with other causes; and the court to which such papers are sent, shall be and is hereby vested with full power, authority and jurisdiction, to award subpoenas for witnesses, to enforce their attendance, to grant commissions for taking depositions, to hear and determine said controversy, to award executions, and do all matters and things relative thereto, which the said court, from which the said cause was removed, might or could legally have done.

SEC. 2. That the expenses attending the removal, shall be paid by the person praying the same, and the person who removal.

Venue may be
changed, and
for what cause

Proceedings.

Papers to be
forwarded by
clerk.

Expenses of

removal.

shall be entrusted to convey said papers to the clerk of the circuit court, to which they shall be sent, shall and may receive the sum of eight cents, for each mile he must necessarily travel in going to and returning from said clerk's office, which sum shall be paid into the hands of the clerk of the court, where the papers originated, before they shall be delivered out of his office.

Clerk, how far accountable for the papers.

SEC. 3. That the clerk of the court in which the said suit originated, shall be answerable for the fidelity of the person he may employ to convey said papers from his office, to the office of the clerk of the court, to which they may be sent, but shall not be answerable for accidents, not arising from neglect.

Judges' order to be preserved by the clrk.

SEC. 4. That the venue in no case, shall be changed, unless the party who prays the same shall deposite the order of the judge or judges removing the same, together with the petition aforesaid; which shall be carefully preserved by the clerk, and also the necessary expenses attending the removal, with the clerk having custody of the papers, at least thirty days before the court, at which the said suit shall be set for trial.

No change to the county where either party resides.

SEC. 5. No change of venue shall be granted, so as to have the cause sent to either of the counties, where the parties may reside, nor shall there be more than one removal of the same cause.

No change to a different circuit, unless the president be interested.

Notice.

SEC. 6. No change of venue shall be granted, so as to take the cause out of the circuit, where the suit is commenced, unless the president of the circuit be interested or prejudiced, nor until the party applying for such change, shall produce to the judge, to whom such application is made, sufficient proof that the opposite party has had ten days previous notice in writing of the time and place, such application is intended to be made, or in case of absence out of the county or state, to his, her or their agent or attorney in fact, or attorney at law, which notice shall be certified by the judge granting such change, to the clerk where the suit was commenced.

Petitioner failing, to pay \$ 5 to opposite party.

SEC. 7. If any person wishing to obtain a change of venue, shall have given notice to the opposite party, as is provided by this act, and shall fail to attend on the day and at the place appointed, or shall attend and shall not make out sufficient cause as aforesaid, he shall pay to the opposite party five dollars for his false clamour, to be taxed by the clerk and collected as other costs; and in order the better to carry this section into effect, the judge or judges before whom the application is made for a change of venue, shall file the petition and other papers in the clerk's office, with his decision thereon.

CHAPTER CXVI.

An Act regulating Weights and Measures.

[APPROVED, JANUARY 21, 1818.]

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That the several boards of county commissioners within this state, be, and they are hereby authorized and required to procure for their respective counties, and at the expense of the same, a set of the following measures and weights, for the use of their county, that is, one measure of one foot or twelve inches, English measure, so called; also, one measure of three feet or thirty-six inches, as aforesaid; also, one half bushel measure for dry measure, which shall contain one thousand seventy five and one fifth solid inches; also, one gallon measure, which shall contain two hundred and thirty-one solid inches; which measures are to be of wood or any metal the court may think proper; also, one set of weights commonly called Averdupois weight, and sealed with the name or initial letters of the county inscribed thereon; which weights and measures shall be kept by the clerk of the circuit court of each and every county in this state, for the purpose of trying and sealing the weights and measures used in their counties.

SEC. 2. As soon as the several boards of county commissioners shall have furnished the weights and measures as aforesaid, they shall cause notice thereof to be given at the court house door for one month; and any person who shall thereafter buy or sell any commodity whatsoever, by measures or weights, that shall not correspond with the county weights and measures, shall for every such offence, being legally convicted thereof, forfeit and pay the sum of twenty dollars, for the use of the county seminary where such offence shall have been committed, and also the costs, to be recovered before any justice of the peace for said county.

Every person or persons desirous of having his, her or their weights and measures, tried by the county standard, shall apply to the clerk of the circuit court of the county in which he shall live, and if they correspond with the county standard, the clerk shall seal them with the seal provided for that purpose.

County commissioners to procure measures and weights;

To be kept by the clerk of the circuit court.

Persons selling by other weights and measures, fineable.

Clerk to seal weights, &c.

CHAPTER CXVII.

An Act allowing and regulating the Writ of Ad Quod Damnum.

[APPROVED, DECEMBER 20, 1823.]

*Writ ad quod
damnum, in
what cases to
issue.*

*Application,
how to be
made.*

*Jury to be
summoned.*

*Jury, to view,
examine, &c.*

*Inquest to be
returned to
the next court
&c.
Proceedings
thereon.*

SEC. 1. Be it enacted by the General Assembly of the state of Indiana, That if any person owning lands on one side of a watercourse, and the bed thereof, either by a legal or equitable title, and desiring to erect a dam across the same, for the purpose of building a water grist mill, saw mill, carding or fulling mill, or any other machinery to be propelled by water on such lands, and erect a dam across the same, shall not own the land on the opposite side thereof, against which he would abut his dam, he shall make application for a writ of *ad quod damnum* to the circuit court of the county where such lands may lie, which court shall thereupon order their clerk to issue such writ to be directed to the sheriff, commanding him to summon and empanel twelve fit persons to meet on the land so proposed for the abutment, on a certain day to be named by the court and inserted in said writ, of which day ten days previous notice to the proprietor thereof shall be given, if to be found in the county, and if not, then to his agent, if any he have in the county, or if no agent, to be advertised at the door of the court house of the proper county, for two terms.

SEC. 2. The jury so summoned and empanelled shall be charged by the sheriff, impartially, and to the best of their skill and judgment, to view the land proposed for an abutment, and to locate and circumscribe by metes and bounds one acre thereof, having due regard thereto to the interests of both parties, and to appraise the same according to its true value, to examine the land above and below, the property of others, which may probably overflow, and say what damage it will be to the several proprietors, and whether the mansion house of any such proprietor or proprietors, or the offices, curtilages or gardens, thereunto immediately belonging, will be overflowed, to inquire whether and in what degree fish of passage, or ordinary navigation will be obstructed, whether by any and what means, such obstruction may be prevented, and whether in their opinion, the health of the neighbours will be annoyed by the stagnation of the waters.

SEC. 3. The inquest so made and sealed, by the said jurors, together with the writ shall be returned by the sheriff to the next succeeding court, who shall thereupon order summonses to be issued to the several persons, proprietors or tenants of the land so located or found liable to damage, if they be to be found within the county where the lands so to be condemned or overflowed do lie; and if not, then to their agent, if any they have, to shew cause if any they

have, why the party so applying should not have leave to build his said mill dam.

SEC. 4. Where any person may have built a mill or other dam, whereby the water of any river, creek, run or spring may be rendered thereby stagnant, it may be lawful for any person interested therein, or who may be damaged by the overflowing of said water to obtain a writ of *ad quod damnum*, in the same manner as is directed in case of persons wishing to build a new mill, and the jury so summoned shall ascertain the damage, which any individual may sustain, in consequence of the continuance of the said milldam, and whether the said mill is of public utility, and after the jury aforesaid shall have made their return, it shall be the duty of the owner or owners of the said mill to pay to any and every individual the sum assessed by the jury aforesaid; and upon payment of said assessment, the said owner or owners shall be clear of all damages to the person interested as aforesaid, any law, usage or custom to the contrary notwithstanding.

SEC. 5. In like manner, if the person proposing to build such mill and dam, shall own the land on both sides of the stream, application shall be made, to the court aforesaid of the county where the mill house will stand, for a writ to examine as aforesaid what lands may be overflowed, and to make the same examination and report, as in the case last mentioned, which writ shall be directed, executed and returned, as prescribed in the former case.

SEC. 6. If on such inquest or other evidence, it shall appear to the court, that the mansion house of any proprietor, curtilage or garden thereunto immediately belonging, will be overflowed, or the health of the neighborhood annoyed, they shall not give leave to build such mill and dam; but if none of those injuries are likely to accrue, they are then to proceed to adjudge whether, all circumstances weighed, it be reasonable, that such leave be given, or not given accordingly.

SEC. 7. And if the party applying shall obtain leave to build the said mill and dam, he shall, upon paying, respectively, to the several proprietors entitled, the value of the acre so located, and the damages, which the jurors find will be by overflowing the lands above and below, become seized in fee simple of the said acre of land; but if he shall not within one year thereafter begin to build the said mill and finish the same within three years, and afterwards continue it in good repair for public use, or in case the said mill and dam be destroyed, if he shall not begin to rebuild it within one year after such destruction, and finish it within three years thereafter, the said acre of land shall revert to the former proprietor and his heirs, unless at the time of such destruction, the owner thereof be a feme covert, infant, imprison-

*Writ, how ob-
tained after
building mill.*

*Proceedings
thereon.*

*Where the
stream shall
be a county
boundary,
where to make
application.*

*Duty of the
court, on re-
turn of the
writ.*

*Applicant to
pay damages.*

*Begin to build
within 1 year.*

Proceedings under this writ, not to bar action for injuries not estimated.

ed, or of unsound mind, in which case, the same time shall be allowed after such disability be removed.

SEC. 8. The inquest of the said jurors nevertheless, or opinion of the court shall not bar any prosecution or action, which any person would have had in law, had this act never been made, other than for such injuries, as were actually foreseen and estimated by the jury.

SEC. 9. That all laws and parts of laws heretofore in force, in this state, regulating the writ of *ad quod damnum*, be and the same are hereby repealed.

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